



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018


Via electronic mail

RE: OMA Request for Review – 2014 PAC 28040

Dear [REDACTED]

On February 18, 2014, you submitted a Request for Review to the Public Access Bureau alleging violations of OMA by the Local School Council (LSC) of Grimes/Fleming Elementary School. Your Request for Review requested that this office keep your Request for Review confidential.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) requires a person submitting a Request for Review sign the Request for Review. Section 3.5(b) of OMA also requires the Public Access Bureau to "forward a copy of the request for review to the public body" within 7 business days of receiving the Request for Review. Because section 3.5(a) of OMA requires that the Request for Review be signed by you and because section 3.5(b) requires this office send a copy of the Request for Review to LSC, OMA does not permit you to remain anonymous or this office to keep your Request for Review confidential. On February 24, 2014, an Assistant Attorney General in the Public Access Bureau left a voicemail message for you to discuss your request that your Request for Review be kept confidential; you did not respond. Because there is no indication that you are still interested in this matter, and because the membership of the LSC is likely to be different at present, this file is closed.


October 25, 2018

Page 2

Please contact me at (217) 782-9054 or at the Springfield address on the first page of this letter if you have questions.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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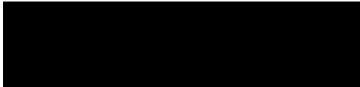


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018

Via electronic mail



RE: OMA Request for Review – 2014 PAC 30253

Dear



On July 8, 2014, this office received your Request for Review alleging that the City of Country Club Hills Board of Trustees (Board) did not allow public participation at its July 7, 2014, meeting in violation of section 2.06(g) of the Open Meetings Act (OMA) (5 ILCS 120/2.06(g) (West 2016)). On July 17, 2014, this office sent a copy of your Request for Review to the Board asking for a response to your allegation, but did not receive an answer. This office also has not heard from you about this matter since your August 11, 2014, correspondence to this office. In particular, on May 15, 2018, this office left a voicemail message for you to follow up on this matter, but did not hear back. Because there is no indication that you are still interested in this matter, and because the membership of the Board is likely to be different at present, this filed is closed. Please contact this office at 877-299-3642 if you have any questions.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018

Via electronic mail
Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

Via electronic mail
Ms. Nanci Rogers
Robbins Schwartz
55 West Monroe, Suite 800
Chicago, Illinois 60603
nrogers@robbins-schwartz.com

RE: OMA Request for Review – 2014 PAC 30969

Dear Mr. Kraft and Ms. Rogers:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the College of DuPage Board of Trustees (Board) did not violate the requirements of OMA in connection with its August 21, 2014, meeting.

On August 26, 2014, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA in several ways at its August 21, 2014, meeting. The allegations in Mr. Kraft's Request for Review largely concern the Board's rules

Mr. John Kraft
Ms. Nanci Rogers
October 25, 2018
Page 2

governing public comment and the Board's implementation of those rules at the meeting.¹ A portion of Mr. Kraft's Request for Review also alleges that an agenda item to approve a resolution to censure a trustee violated OMA because it did not name the trustee, and because the resolution read at the meeting contained additional items. In response to a request from this office, the public body submitted a detailed answer to the allegations in the Request for Review, as well as the relevant agenda and meeting minutes.

The Public Access Bureau has reviewed the materials submitted by Mr. Kraft and the Board. As noted in the Board's response, Mr. Kraft does not allege, nor is there any indication, that he or any other member of the public was prohibited from addressing the Board at the August 21, 2014, meeting. On the contrary, everyone present at the meeting who wished to comment was permitted to do so. This office has consistently determined that it will not undertake a review of a public bodies' rules or practices concerning public comment without an allegation that the rules were applied in a manner that restricted a member of the public from exercising his or her statutory right to address that public body. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 50371*, issued November 30, 2017, at 2.


Additionally, this office concludes that the agenda for the August 21, 2014, meeting contained the essential details necessary to inform the public of the "general subject matter" of the resolution to be addressed at that meeting, as required by the plain language of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)); *see also Foxfield Subdivision v. Village of Campton Hills*, 389 Ill. App. 3d 989, 997 (2nd Dist. 2009) (OMA does not require a public body to provide a "specifically detailed" agenda; instead OMA "requires only that the action taken at a special meeting be germane to the agenda listed in the notice."). Accordingly, the Public Access Bureau concludes that Board did not violate the requirements of OMA in connection with its August 21, 2014, meeting.

¹Mr. Kraft's Request for Review also alleged that the Board violated OMA by beginning its August 21, 2014, meeting at 7:21 p.m. instead of 7:00 p.m. as was listed on the agenda. This office has determined that a similar allegation by Mr. Kraft in a separate Request for Review did not warrant further inquiry because it did not set forth facts supporting an OMA violation, and we adopt that conclusion here. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 38649*, issued December 16, 2015, at 2. Additionally, this office will not review Mr. Kraft's allegation that the Board improperly excluded a Board member from its closed session discussion because it does not set forth facts supporting an OMA violation. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 35792*, issued June 19, 2015 (finding that OMA does not govern who may or may not attend a closed session.).

Mr. John Kraft
Ms. Nanci Rogers
October 25, 2018
Page 3

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at the Chicago address on the first page of this letter if you have questions.

Very truly yours,



SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Ms. Deanne Mazzochi
Chair, Board of Trustees
College of DuPage
425 Fawell Boulevard
Glen Ellyn, Illinois 60137
bot-mazzochid@cod.edu



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018

Via electronic mail



RE: OMA Request for Review – 2016 PAC 42970

Dear



The Public Access Counselor has received your Request for Review concerning alleged Open Meetings Act (OMA) violations by the Village of Broadview (Village) at its June 20, 2016, meeting. In an October 25, 2018, telephone conversation with an Assistant Attorney General in the Public Access Bureau, you confirmed that this matter may be closed. Accordingly, this letter serves to close this matter. If you have questions, please contact me at the Springfield address below.

Very truly yours,



CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

42970 o i n f r m u n

cc: *Via electronic mail*
The Honorable Kevin McGrier
Clerk, Village of Broadview
2350 South 25th Avenue
Broadview, Illinois 60155
kmcgrier@broadview-il.gov



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2018

Via electronic mail
The Honorable Bernice Brewer



RE: OMA Request for Review – 2018 PAC 55321

Dear Ms. Brewer:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On October 16, 2018, this office received your Request for Review stating that as a Trustee on the Village of Sauk Village Board of Trustees (Board), you had requested certain items to be removed from the agendas of the Board's September 11, 2018, September 25, 2018, and October 9, 2018, meetings. You further stated that the mayor declined your requests, and that the Board continued with consent votes on the items. You contended that the Board could not group the items and take a consent vote unless all the trustees agreed to do so. Specifically, you contended that the Board had to vote on the items separately if an objection was made to taking a consent vote based on section 3.1-40-40 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/3.1-40-40 (West 2016)).

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). 15 ILCS 205/7(c)(3) (West 2016). Therefore, your allegation that the Board has not complied with a specific provision in the Municipal Code is not subject to review by this office. Unlike section 3.1-40-40 of the Municipal Code, OMA does not govern when a board may take action by consent vote. Rather, OMA concerns the transparency with which public bodies meet and conduct business in relation to the public. Because your submission did not set forth a summary

The Honorable Bernice Brewer
October 25, 2018
Page 2

of facts supporting the allegation that the Board violated OMA,¹ this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

55321 o no fi war mun

cc: *Via electronic mail*
The Honorable Derrick Burgess
Mayor
Village of Sauk Village
Office of the Village Board
21801 Torrence Avenue
Sauk Village, Illinois 60411
Trustees@SaukVillage.org

¹ 5 ILCS 120/3.5(a) (West 2016) ("The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation.").



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Via electronic mail



Via electronic mail


Mr. Stephen M. Martin
Corporation Counsel
City of Waukegan
100 North Martin Luther King, Jr. Avenue
Waukegan, Illinois 60085
steve.martin@waukeganil.gov

RE: OMA Request for Review – 2016 PAC 41762

Dear [REDACTED]


On May 4, 2016, this office received [REDACTED] Request for Review alleging that the City Council of Waukegan (Council) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by failing to provide an adequate summary of two agenda items in the minutes of its April 4, 2016, meeting. On May 25, 2016, this office forwarded a copy of the Request for Review to the Council and asked it to provide a written response to that allegation.

On July 7, 2016, Mr. Stephen M. Martin, the City's Corporation Counsel, responded on behalf of the Council. Mr. Martin's response included an updated version of the April 4, 2016, which provided additional details relating to the two agenda items at issue in [REDACTED] Request for Review. This office has reviewed the original and updated versions of the April 4, 2016, minutes; the updated version appears to include "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken" in connection with the disputed agenda items, as required by section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)). Because the Council has remedied the alleged violation by amending the April 4, 2016, meeting minutes to provide the requisite details, no further action by the Public Access Bureau is necessary.


Mr. Stephen M. Martin
October 26, 2018
Page 2

This file is closed. If you have any questions, please contact me at (312) 814-5383 or the Chicago mailing address on the bottom of the first page.

Very truly yours,


S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

41762 o inf r mun



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Via electronic mail

RE: OMA Requests for Review – 2018 PAC 55396; 55398; 55399; 55400;
55401; 55402; 55403; 55404; 55405; 55406; 55407; 55409; 55410; 55411,
55412; 55414

Dear [REDACTED]

The Public Access Bureau has received the above-captioned Requests for Review, in which you allege that Sterling Municipal Band Commission (Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)). After reviewing the information that you have furnished, however, this office concludes that no further action is warranted.

On October 22, 2018, you submitted the following Requests for Review alleging:

- 1) 2018 PAC 55396 – the header of the agenda for the January 21, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 2) 2018 PAC 55398 – the header of the agenda for the Commission's February 12, 2018, meeting did not specify the location of the meeting;
- 3) 2018 PAC 55399 - the header of the agenda for the February 27, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 4) 2018 PAC 55400 - the header of the agenda for the March 12, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 5) 2018 PAC 55401 – the header of the agenda for the Commission's April 9, 2018, meeting did not specify the location of the meeting;

- 6) 2018 PAC 55402 – the header of the agenda for the April 17, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 7) 2018 PAC 55403 – the header of the agenda for the May 3, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 8) 2018 PAC 55404 – the header of the agenda for the Commission's May 14, 2018, meeting did not specify the location of the meeting;
- 9) 2018 PAC 55405 – the header of the agenda for the Commission's June 11, 2018, meeting did not specify the location of the meeting;
- 10) 2018 PAC 55406 – the header of the agenda for the Commission's July 9, 2018, meeting did not specify the location of the meeting;
- 11) 2018 PAC 55407 – the header of the agenda for the Commission's August 13, 2018, meeting did not specify the location of the meeting; the agenda indicated that the Commission would improperly enter closed session to discuss financial matters;
- 12) 2018 PAC 55409 – it is improper for the mayor's brother to control the Commission's finances as reflected in the minutes of the Commission's February 12, 2018, meeting;
- 13) 2018 PAC 55410 – because only the director of the band has authority to admit or dismiss band members, the Commission improperly considered a motion to temporarily reinstate you as a band member as reflected in its April 9, 2018, meeting minutes;
- 14) 2018 PAC 55411 – the executive director of Sterling Main Street may have a conflict of interest because the minutes of the Commission's July 9, 2018, meeting indicate that she will be paid \$1,200 for an advertisement;
- 15) 2018 PAC 55412 – although the Commission lacks authority to dismiss you, the minutes of the Commission's August 13, 2018, meeting reflect a motion to dismiss you as a player and announcer;
- 16) 55414 – you were not notified of the Commission's November 13, 2017, meeting in which you were terminated as the Band's business manager; the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney

General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, **by a person utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a **summary of the facts supporting the allegation**. (Emphasis added.)

This provision permits a person using reasonable diligence who discovers an alleged violation of OMA after the initial 60-day period has expired to submit a Request for Review within 60 days of the date that the violation was discovered. The allegations in the above-referenced Requests for Review concern meetings that occurred more than 60 days before you filed your Requests for Review. You have not, however, asserted that you discovered the alleged violations outside of the initial 60-day period or provided any information indicating that you did not discover them within 60 days of their occurrence despite using reasonable diligence. Accordingly, this office does not have authority to review the allegations.

Even if you did use reasonable diligence and submitted your Requests for Review before the statutory period expired, you have not provided facts from which this office could conclude that the Commission violated OMA. The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.")

To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part, that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Similarly, section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)), requires that "[p]ublic notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides, "[a]ny agenda required under this Section **shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action** at the meeting." (Emphasis added.)

The plain language of section 2.02 of OMA, does not require a public body to include on its agenda or notice the physical address of the location where the meeting will be held. Although a public body must provide the *public* with advance notice of its meetings in

[REDACTED]
October 26, 2018

Page 4

accordance with section 2.02 above, OMA does not require the Commission to personally notify its members or officials; that is a purely internal matter. Therefore, your claims that the Commission did not personally notify you of its November 13, 2017, meeting or specify the location of its meetings on the meeting agendas do not provide facts supporting the allegation that the Commission violated OMA. *See, e.g., People v. Lewis*, 223 Ill. 2d 393, 403 (2006) (a reviewing body may not add a requirement to a statute that is not found in its plain language).

With respect to the remaining allegations, the Public Access Counselor's authority is limited to reviewing alleged violations of the Freedom of Information Act (FOIA) and OMA. *See* 15 ILCS 205/7 (West 2016). No provision of OMA prohibits the Commission's chair from transmitting the Commission's meeting minutes on a public school fax machine. Nor does OMA govern alleged conflict of interests or who has authority to reinstate or dismiss band members or handle the Commission's finances. Lastly, your allegation that the Commission improperly discussed financial matters in closed session is based solely on an agenda item. That allegation is vague, and does not provide a summary of supporting facts such as information from the actual meeting or the meeting minutes indicating that the Commission entered closed session and the exception or exceptions that it cited as its bases for doing so.

Accordingly, this office will take no further action in these matters. These files are closed. If you have any questions, you may contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

55396; 55398; 55399; 55400; 55401; 55402; 55403; 55404; 55405; 55406; 55407; 55409;
55410; 55411; 55412; 55414 o no fi war mun

cc: Mr. Gonzalo S. Reyes
Band Commissioner
Sterling Municipal Band
Post Office Box 994
Sterling, Illinois 61081



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55408


Dear [REDACTED]

The Public Access Bureau has received the above-captioned Request for Review, in which you allege that the Sterling Municipal Band Commission (Band Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)). After reviewing the information that you have furnished, however, this office concludes that no further action is warranted.

On October 22, 2018, you submitted a Request for Review alleging that the header of the Band Commission's September 10, 2018, meeting agenda did not specify the location of the meeting. You also alleged that two people terminated during the meeting were told they would be mailed evaluations and termination notices, but did not receive those documents.

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.")

To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part, that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Similarly, section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)), requires that "[p]ublic notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in


October 26, 2018

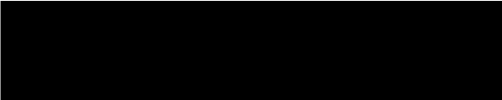
Page 2

which the meeting is to be held." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides, "[a]ny agenda required under this Section **shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting.**" (Emphasis added.)

The plain language of section 2.02 of OMA does not require a public body to include on its agenda or notice the physical address of the location where the meeting will be held. Nor does any provision of OMA require the Band Commission to send terminated band members evaluations or termination notices. Accordingly, this office will take no further action on this matter. See 5 ILCS 120/3.5(a) (West 2016) (requiring a Request for Review to provide a summary of facts supporting the allegation that a public body violated OMA).

This file is closed. If you have any questions, you may contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,


STEVE SILVERMAN
Bureau Chief
Public Access Bureau

55408 o no fi war mun

cc: Mr. Gonzalo S. Reyes
Band Commissioner
Sterling Municipal Band
Post Office Box 994
Sterling, Illinois 61081



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55413

Dear [REDACTED]

The Public Access Bureau has received the above-captioned Request for Review, in which you allege that the Sterling Municipal Band Commission (Band Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)). After reviewing the information that you have furnished, however, this office concludes that no further action is warranted.

On October 22, 2018, you submitted a Request for Review alleging that the minutes of the Band Commission's September 10, 2018, meeting were not posted on the City's website until more than 10 days after the meeting.

Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. **The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public¹ body.** Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its **governing body** open to the public on the public body's website within 10 days after the approval of the minutes

¹The plain language of this provision requires minutes to be made publicly available within 10 days of approval by the public body, not within 10 days after the meeting.

[REDACTED]
October 26, 2018

Page 2

by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting. (Emphasis added.)

The City Council rather than the Band Commission is the City's governing body. Therefore, section 2.06(b) of OMA did not require the Band Commission to post its September 10, 2018, meeting minutes on the City's website within 10 days of the minutes' approval. Accordingly, this office will take no further action on this matter. *See* 5 ILCS 120/3.5(a) (West 2016) (requiring a Request for Review to provide a summary of facts supporting the allegation that a public body violated OMA).

This file is closed. If you have any questions, you may contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

55413 o no fi war mun

cc: Mr. Gonzalo S. Reyes
Band Commissioner
Sterling Municipal Band
Post Office Box 994
Sterling, Illinois 61081

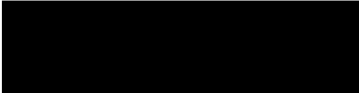


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2018

Via electronic mail



Via electronic mail

The Honorable Andrew Rand, Chairman
Peoria County Board
1230 West Moss Avenue
Peoria, Illinois 61606
arand@peoriacounty.org


Re: OMA Request for Review – 2018 PAC 54766

Dear [REDACTED] and Mr. Rand:

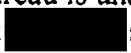
This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On September 6, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Peoria County Board (Board) improperly required members of the public to write down their home addresses in order to address the Board during the public comment portion of its July 12, 2018, meeting. This office twice sent a copy of the Request for Review to the Board and asked it to provide this office with a copy of its established and recorded rules governing public comment and a response to [REDACTED] allegation, among other materials, but did not receive a response.

As an initial matter, section 3.5(b) of OMA (5 ILCS 120/3.5(b) (West 2016)) provides, in relevant part: "Within 7 working days after receipt of the request for review, the public body shall provide copies of the records requested and shall otherwise fully cooperate with the Public Access Counselor." This office cautions the Board that it is required to provide this office with copies of records upon request pursuant to a Request for Review.


The Honorable Andrew Rand
October 29, 2018
Page 2


Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." "[T]he primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. The Attorney General has issued a binding opinion concluding that a rule requiring members of the public to announce their home addresses prior to speaking would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g): "[T]he language of section 2.06(g) does not support a requirement that a person must provide his or her complete home address prior to being allowed to make a public comment. * * * Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 6-7.

The Public Access Bureau is unable to conclude that the Board violated OMA based on the limited information that  submitted. He alleged that he filled out a sign-up sheet at the July 12, 2018, meeting that required him to write down his address before he could address the Board. However, he did not set forth facts indicating that the Board prohibited any members of the public from speaking during public comment on the basis that they would not disclose their home addresses. Accordingly, this office will take no further action in this matter. See 5 ILCS 120/3.5(a) (West 2016) (requiring a Request for Review to provide a summary of facts supporting the allegation that a public body violated OMA).

Nonetheless, in this office's educational capacity (15 ILCS 205/7(a), (b), (c) (West 2016)), this office advises the Board, for the reasons explained in Binding Opinion 14-009, to refrain from requiring members of the public to provide their home addresses as a condition for providing public comment. A copy of that opinion is attached.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter.

Very truly yours


MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau



The Honorable Andrew Rand
October 29, 2018
Page 3

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Attachment



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

September 4, 2014

**PUBLIC ACCESS OPINION 14-009
(Request for Review 2014 PAC 29739)**

**OPEN MEETINGS ACT:
Information Required of
Speakers Wishing to
Provide Public Comment**

Ms. Janet Hughes
[REDACTED]

The Honorable Brian K. Reaves
Mayor, Village of Lemont
418 Main Street
Lemont, Illinois 60439

RE: OMA Request for Review – 2014 PAC 29739

Dear Ms. Hughes and Mayor Reaves:

This is a binding opinion issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the following reasons, this office concludes that the Lemont Village Board (Board) violated OMA during the public comment portion of its April 14, 2014, regular meeting by requiring Ms. Janet Hughes to state her home address in order to address the Board.

BACKGROUND

On June 6, 2014, Ms. Hughes submitted a Request for Review alleging that the Board, acting through Mayor Brian Reaves and Village Attorney Jeff Stein, "pressured" and "forced" her to state her home address for the record prior to being permitted to provide public

Ms. Janet Hughes
The Honorable Brian K. Reaves
September 4, 2014
Page 2

comment during the Board's April 14, 2014, meeting.¹ In support of her allegation, Ms. Hughes appended an affidavit in which a witness stated, "[d]uring the public Board meeting, I witnessed Mayor Brian Reaves and Village Attorney Jeff Stein force Janet Hughes to state her home address for the record in order for her to participate during public comments."² The Public Access Bureau interpreted this Request for Review as an allegation that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body[.]" by predicating Ms. Hughes' right to address the Board on the public disclosure of her home address.

On June 13, 2014, the Public Access Bureau sent a copy of Ms. Hughes' Request for Review to the Mayor and asked for a written response to the allegations, a copy of the Board's rules governing public comment, and the agenda and minutes of the April 14, 2014, Board meeting. In addition, if the Board had adopted a rule requiring an individual wishing to make a public comment at a Board meeting to publicly state his or her home address, the Public Access Bureau requested that the Board explain its rationale for such a rule. In the absence of such a rule, then the Public Access Bureau asked for an explanation for requiring Ms. Hughes to provide her home address at the April 14, 2014, meeting.³

Counsel for the Village, Mr. Andrew S. Paine, responded in a letter dated June 30, 2014. Mr. Paine furnished copies of the agenda and minutes from the April 14, 2014, meeting and a copy of the Village ordinance governing public comment at Board meetings. Mr. Paine explained that the Board "has a long standing custom and practice of asking any member of the public wishing to address the Board to provide his or her address."⁴ Mr. Paine also asserted that although Ms. Hughes initially declined the Mayor's request to state her home address for the record at the April 14, 2014, meeting, Ms. Hughes "provided her address by her own volition and not as a requirement to speak before the Board" and was "afforded the opportunity to address the

¹E-mail from Janet Hughes to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 6, 2014).

²Affidavit of Victor R. Fisher, ¶ 5 (June 5, 2014).

³Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mayor Brian K. Reaves, Village of Lemont (June 13, 2014).

⁴Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

Ms. Janet Hughes
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Mayor and the Board, an opportunity to which she took full advantage."⁵ Mr. Paine further stated that Ms. Hughes "ha[d] followed [the rules and customs] in the past without objection."⁶

On July 9, 2014, this office forwarded the Village's response to Ms. Hughes.⁷ On July 22, 2014, Ms. Hughes replied via e-mail and provided a video recording of the relevant portion of the April 14, 2014, meeting as an attachment in mp4 format. Ms. Hughes stated that Village Ordinance O-84-10 does not require a participant to provide a home address in order to publicly address the Board. Ms. Hughes also asserted that "customs and practices" do not constitute "rules" within the meaning of section 2.06(g) of OMA. Finally, Ms. Hughes reiterated that a person's home address is private information, and claimed that she does not recall publicly stating her address at prior public meetings.⁸ The Board's attorney was copied on Ms. Hughes' response.

ANALYSIS

This office has reviewed the video recording of the exchange among Ms. Hughes, Mayor Reaves, and Mr. Stein during the April 14, 2014, Board meeting. The video shows Mayor Reaves introducing the "audience participation" period by asking anyone who wished to participate to approach the podium and state his or her name and address for the record. Mayor Reaves also reminded the attendees to limit their comments to three minutes and to confine their comments to new areas.

Ms. Hughes approached the podium, stated her name, and said that she was a taxpayer from Lemont. At that point, Mayor Reaves stated, "I need your address, too[.]"⁹ Ms. Hughes provided the name of her street and the nearest intersection to her home, and then began her comments. The Mayor again stated that he needed her full address. Ms. Hughes attempted to continue her comments without providing her address, but Mayor Reaves said "I have been

⁵Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

⁶Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

⁷Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau to Janet Hughes (July 9, 2014).

⁸Letter from Janet Hughes to Timothy O'Brien, Assistant Attorney General, Public Access [Counselor]. Office of the Illinois Attorney General (July 22, 2014).

⁹Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

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Page 4

instructed by counsel that I need the exact address for public record for public conversations."¹⁰ Ms. Hughes responded that she was "not comfortable" providing her complete address.¹¹ Mayor Reeves then publicly sought the counsel of Mr. Stein. The audio portion of the off-camera remarks of Mr. Stein is not entirely clear. However, Mr. Stein can be heard stating that a person's refusal to provide an address would not bar an individual from providing comment, but that it is "helpful."¹² Mr. Stein also noted that if Ms. Hughes did not wish to provide her address, the Board should allow her to speak and "take it for what it is."¹³ Following this exchange, Ms. Hughes stated her home address and continued addressing the Board.

Prior to January 1, 2011, the OMA did not guarantee members of the public the right to address public bodies. Instead, any right to do so was derived from statutes governing specific governmental entities or policies adopted by them. Section 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, now requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings.

The right to address a public body is not without limits, however. To the contrary, section 2.06(g) expressly provides that public comment is subject to the "rules established and recorded by the public body." Although OMA does not specifically address the types of rules that a public body may adopt, public bodies may generally promulgate reasonable "time, place and manner" regulations which are necessary to further a significant governmental interest. *See, e.g., I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (examining whether the application of city council's rules for public comment violated plaintiffs' rights). "City Councils have legitimate reasons for having rules to maintain decorum at public meetings[]" and "to assure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). For example, a public body may prescribe time limits for public comment. *See Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that a time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, thus did not violate the speaker's first amendment rights).

¹⁰Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹¹Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹²Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹³Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

Ms. Janet Hughes
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September 4, 2014
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The Village's ordinance governing public comment provides:

Persons who wish to address the Board on any matter may request recognition prior to the meeting, or during Audience Participation, or if the matter relates to a specific agenda item, during the discussion of that item. The President will attempt to accommodate such requests to the extent practicable by directing that such requests shall be heard during Audience Participation or during debate on a specific agenda item. The President may in his discretion set a time limit for each person's address, taking into account the number of persons wishing to be heard on a matter and the amount of village business requiring attention. The President or a majority of the Trustees present may extend the limitation of time or grant additional time to individual speakers and the President's denial of or limitation on any request may be overruled by a majority of the Trustees present. Provided, any failure to adhere to the provisions of this section, and any such restriction or limitation upon any speaker, shall not impair or affect any ordinance, resolution, motion or other action of the Board.¹⁴

The ordinance does not require that a member of the public state his or her home address before speaking at public meetings of the Board. In response to this office's inquiry, the Board confirmed that it has not promulgated such a rule.¹⁵ Rather, the Board referred to requiring members of the public to provide their home addresses before speaking at public meetings as a "custom and practice."¹⁶

The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules. Section 2.06(g) does not recognize conditions on speaking arising out of "custom and practice," unless those conditions are incorporated into the public body's rules. Here, the Board's established and recorded rules governing public comment do not include a requirement that an individual publicly state his or her home address before speaking at public meetings. At the

¹⁴Village of Lemont, Illinois, Municipal Code ch. 2, § 2.08.060 (2011).

¹⁵Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

¹⁶Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

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April 14, 2014, meeting, however, the Mayor stated that those individuals wishing to speak should approach the podium and give their names and addresses. Further, the video recording shows that the Mayor specifically requested that Ms. Hughes state her address and repeated that request when she attempted to begin her public comments without first providing her address. The Mayor then asked the Village Attorney how to proceed, and he indicated that the Board should allow Ms. Hughes to speak without providing her address. After the Attorney's comments, however, Ms. Hughes went ahead and stated her address, then provided her comments.

While it is not clear that the Board would have continued to request her address after the Village Attorney responded to the Mayor's request for guidance, it does appear that the requests for her address had the effect of making Ms. Hughes feel that she needed to state her complete home address before she could provide public comments. Further, in its response to this office the Board described asking for home addresses of speakers as a "longstanding custom and practice" of the Village, "along with countless other public bodies."¹⁷ Even if the Mayor had allowed Ms. Hughes to address the Board without providing her complete home address in this instance, this scenario raises an important issue – whether requiring, either by "custom and practice" or by rule, that individuals provide home addresses before addressing a public body is consistent with OMA. Because it appears that many public bodies have such a requirement, clarification of the law in this area is warranted.

The Board notes that requiring individuals to state their addresses for the record prior to providing public comment allows for more accurate meeting minutes, permits the Board to determine whether the comments are raised by residents, and enables the Board to follow up on issues raised by members of the public. While the rules governing public comment under section 2.06(g) of OMA may assist in accurate recordkeeping, their primary purpose is to accommodate a speaker's statutory right to address the public body while ensuring that order and decorum are maintained at public meetings. *See Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25. It is understandable that a public body would seek to make sure it is keeping accurate minutes, hearing from residents and other interested parties, and responding effectively to concerns raised at public meetings. Overall, in considering whether it is good policy to ask members of the public to provide their addresses when making public comments, there are reasonable arguments on both sides. Nothing prohibits a speaker from voluntarily providing his or her home address in response to the public body's request. However, the language of section 2.06(g) does not support a requirement that a person must provide his or her complete home

¹⁷Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

address prior to being allowed to make a public comment. Section 2.06(g) specifically provides that "[u]ny person shall be permitted an opportunity to address public officials[.]" (emphasis added) therefore a person's right to comment at an open meeting is not contingent upon where he or she resides. In this case, the Board violated section 2.06(g) of OMA by placing a condition on the making of a public comment that is not part of its established and recorded rules. But, even if the Board had established and recorded a rule requiring speakers to provide their home addresses prior to speaking, we would conclude that such a rule would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g). Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings. Therefore, we conclude that requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA, even if such a rule is established and recorded by the public body.¹⁸

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments of the parties, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On April 14, 2014, Ms. Janet Hughes attended an open meeting of the Lemont Village Board.
- 2) On June 6, 2014, Ms. Hughes submitted a Request for Review to the Public Access Counselor alleging that Village of Lemont officials "pressured" her to state her home address for the record prior to being permitted to provide public comment at an open Board meeting. Ms. Hughes' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2012)).
- 3) The Attorney General properly extended the time to issue a binding opinion by 21 business days, to September 4, 2014, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to Ms. Hughes' Request for Review.

¹⁸The Board and Ms. Hughes disagree whether she had given her home address prior to public comment at previous meetings. Even if Ms. Hughes had previously stated her address at an open meeting in order to be allowed to speak, however, that disclosure would not waive her right to protest this practice or affect the invalidity of such a rule.

4) Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

5) Although the Board is authorized under section 2.06(g) of OMA to establish and record rules related to public comment, the Board did not establish or record a rule that a speaker must provide a home address prior to providing public comment.

6) Prior to the audience participation portion of the April 14, 2014, meeting, the Mayor directed that persons wishing to address the Board approach the podium and state their name and address for the record.

7) When Ms. Hughes attempted to address the Board without providing her exact home address, she was asked three more times to state her complete home address.

8) The Village Attorney advised the Mayor that Ms. Hughes should be allowed to address the Board without providing her complete home address. Ms. Hughes, however, did finally state her full home address before addressing the Board.

9) The Attorney General concludes that the Board violated section 2.06(g) of OMA when it stated that Ms. Hughes must provide her complete home address for the record before addressing the Board, although this requirement was not an established and recorded rule. Further, even if the Board had established and recorded such a rule, the rule would violate OMA because it is not reasonably related to promoting meeting order or decorum; or ensuring that other speakers have an opportunity to address the public body.

Therefore, it is the opinion of the Attorney General that the Lemont Village Board violated the Open Meetings Act when it tried to require Ms. Hughes to state her home address for the record prior to addressing the Board. In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by conducting its future meetings in full compliance with OMA.


This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et. seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a

Ms. Janet Hughes
The Honorable Brian K. Reaves
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complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Janet Hughes as defendants. *See* 5 ILCS 120/7.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

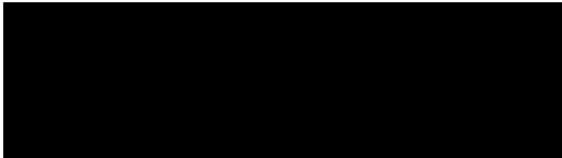


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 26, 2018

Via electronic mail



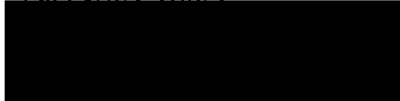
RE: OMA Request for Review – 2018 PAC 54685

Dear 

On August 30, 2018, the Public Access Bureau received your Request for Review pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the City of Elmhurst City Council (City Council) violated OMA by not holding a semi-annual review of its closed session minutes within six months of its last semi-annual review. On October 26, 2018, you advised this office by telephone that you wished to withdraw this Request for Review.

Accordingly, this letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address below.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

54685 o wdrawn mun



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2018

Via electronic mail
Ms. Michelle Langhout
26 West Side Square
Macomb, Illinois 61455
mlanghout@mcdonoughvoice.com

RE: OMA Request for Review – 2018 PAC 55218

Dear Ms. Langhout:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Board of Trustees (Board) of Western Illinois University (University) violated OMA during closed session meetings held in August and September, 2018.

Your Request for Review alleges that the Board may have discussed funding cuts to Tri-States Public Radio during the closed session portions of its August 2018 and September 2018 meetings because the University recently made the decision to cut funding to the radio station "without any prior discussion or rationale given during the Aug./Sept. open session or otherwise."¹

Section 3.5(a) of OMA provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and ***must include a***

¹Illinois Attorney General Correspondence from Michelle Langhout (October 8, 2018).


Ms. Michelle Langhout
October 29, 2018
Page 2

summary of the facts supporting the allegation. (Emphasis added.)

Your Request for Review speculates that the University may have discussed funding cuts during the closed session portions of its August and September 2018 meetings, but does not include a summary of facts supporting that allegation. You noted that the Attorney General issued a binding opinion concluding that the Board improperly discussed certain budgetary matters in closed session during its June 28, 2018, meeting (Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018). However, Tri States Public Radio reported the University's decision to eliminate its funding on August 17, 2018.² The agendas posted on the University's website for the Board's August and September meetings indicate that those meetings were held on August 23-24, and September 27-28—after the University's decision was already public. Because that decision was announced before the Board's August and September 2018 meetings, it cannot be reasonably inferred that the Board subsequently discussed the funding cuts during the closed session portions of those meetings.

Because your Request for Review does not set forth a summary of facts supporting the allegation that the Board violated OMA, and the Public Access Bureau has determined that no further action is warranted on this matter. This letter shall serve to close this matter. If you have any questions, you may contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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²Rich Egger, *WIU Eliminates Funding for Tri States Public Radio*, Tri States Public Radio (August 17, 2018), <http://www.tspr.org/post/wiu-eliminates-funding-tri-states-public-radio>



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 30, 2018

Via electronic mail

[REDACTED]

RE: OMA Request for Review – 2015 PAC 34504

Dear [REDACTED]


On April 2, 2015, this office received your Request for Review under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Maywood Village Board (Board), on which you were a trustee, improperly took final action in the closed sessions of various regular meetings between February 3, 2015, and April 2, 2015. In addition, you alleged that the Board failed to conduct a full semi-annual review of its closed meeting minutes as required by section 2.06(d) of (OMA) (5 ILCS 120/2.06(d) (West 2016)). In its response to this office, the Board denied your allegations about the closed session discussions but acknowledged that it had timely reviewed its closed session minutes and pledged to remedy the issue; it subsequently provided evidence that it performed a semi-annual review. On April 4, 2018, and again on June 11, 2018, an Assistant Attorney General in the Public Access Bureau left you voicemails at the telephone numbers included in your Request for Review to discuss whether you continued to seek this office's assistance in this matter, but did not hear back.

Because there is no indication that you are still interested in this matter, because the Board took remedial action as a result of your complaint, and because the membership of the Board is different at present, this file is closed. 5 ILCS 120/3.5(e) (West 2016). Please contact me at (217) 785-7438 if you have any questions.

Very truly yours,

[REDACTED]

CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau


October 30, 2018

Page 2

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cc: The Honorable Viola Mims
Clerk, Village of Maywood
40 Madison Street
Maywood, Illinois 60153



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 31, 2018



Re: OMA Request for Review – 2012 PAC 21638

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Town of Cicero Board of Trustees (Board) violated OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

Your Request for Review alleges that the Board violated OMA in connection with its August 13, 2012, meeting by failing to read your certified letter in its entirety and include that letter on the agenda and within the meeting minutes.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2012)) further provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." Section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)) requires a public body's meeting minutes to

[REDACTED]
October 31, 2018

Page 2

include "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." However, no provision of OMA requires a public body to include on a meeting agenda letters from members of the public which are not the subject of final action. Furthermore, it is undisputed that your letter was not read aloud or addressed by the Board at the August 13, 2012, meeting. Therefore, regardless of whether your letter was addressed to the Board President, the Board did not violate OMA by not including your letter on the agenda and within the meeting minutes. Because the information you submitted does not include a summary of facts supporting the allegation that the Board violated OMA in connection with its August 13, 2012, meeting, this office has determined that no further action is warranted in this matter.

If you have any questions, please contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

21638 o no fi war mun

cc: *Via electronic mail*
The Honorable Larry Dominick
Town President
Town of Cicero
4949 West Cermak Road, 3rd Floor
Cicero, Illinois 60804
larry@thetownofcicero.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2018

Via electronic mail



Via electronic mail

Ms. Brenda Kern
Village Clerk
Village of Shiloh
1 Park Drive
Shiloh, Illinois 62269
brendak@shilohil.org

RE: OMA Request for Review – 2012 PAC 19753

Dear [REDACTED] and Ms. Kern:

On May 15, 2012, this office received [REDACTED] Request for Review alleging that the Shiloh Village Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2010)). Specifically, [REDACTED] alleged that the Board violated OMA at its May 7, 2012, meeting by not providing advance notice to the public regarding its amendments to a solicitor's ordinance. On May 29, 2012, this office forwarded a copy of [REDACTED] Request for Review to the Board and asked it to provide a written response to this allegation. On June 7, 2012, the Board disputed [REDACTED] allegation, arguing that its practice is to post meeting agendas "on two doors of the Municipal Building and on the lobby bulletin Board on the Friday before the Monday meetings"¹ and to the website by 4 p.m. on the Friday before the Monday meetings.

In order to provide advance notice of meetings and the matters to be discussed and acted upon, "[a]n agenda for each regular meeting shall be posted at the principal office of

¹E-mail from Brenda Kern, Village of Shiloh, Illinois, Village Clerk, to Kathleen Stehling (June 7, 2012).

[REDACTED]
Ms. Brenda Kern
November 1, 2018
Page 2

the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." 5 ILCS 120/2.02(a) (West 2010).

The Village asserted in its response to this office that the notice and agenda for the May 7, 2012, meeting was posted at the Municipal Building and on the Village's website consistent with its usual practice, which means it would have been posted on May 4, 2012. The May 7, 2012, Board meeting agenda included the following item: "Pass Amendments to the Solicitor's Ordinance,"² which appears to be a reference to the "peddler's"³ ordinance referenced by [REDACTED] in his Request for Review. The Village expressly denied [REDACTED] contention that the agenda was not posted at least 48 hours in advance of the meeting. In light of these conflicting versions of the facts, there is insufficient evidence from which this office could conclude that the Village violated section 2.02(a) of OMA in connection with its May 7, 2012, meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us.

Very truly yours,

[REDACTED]

LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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²Shiloh Village Board of Trustees, Agenda Item 1, Administration & Personnel (May 7, 2012).

³Letter from [REDACTED] to Tola Sobitan, Assistant Attorney General, Public Access Bureau (May 14, 2012).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 1, 2018

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55372

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On October 19, 2018, this office received your Request for Review alleging that the Ogden International Local School Council (Council) violated OMA at its October 16, 2018, meeting. Specifically, you alleged that the Council: (1) "attempted to impede [your] ability to record the meeting pursuant to the Open Meetings Act[;]" (2) "added an additional item on the agenda while the meeting was in process" that was directed to a public comment made by you; and (3) circulated the meeting's minutes among Ogden International staff though the minutes "have not yet been voted on by the [Council]" and "are inaccurate as presented."¹ You also alleged that the Council President, David Ramos, "provided inaccurate direction and legal advice to the Local School Council about the Freedom of Information Act [(FOIA) (5 ILCS 140/1 *et seq.* (West 2016))]" that has caused "confusion and misuse of the BCC line in an attempt to circumvent [OMA]."² In support of your claims, you provided this office with a copy of the October 16, 2018, meeting agenda, a video recording of the "out of order portion of the meeting," the circulated meeting minutes, and an e-mail from Mr. Ramos to the Council concerning OMA and FOIA.³

Under section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)), a Request for Review "must include a summary of the facts supporting the allegation."

¹E-mail from [REDACTED] to [Public Access Counselor] (October 19, 2018).

²E-mail from [REDACTED] to [Public Access Counselor] (October 19, 2018).

³E-mail from [REDACTED] to [Public Access Counselor] (October 19, 2018).

November 1, 2018

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Starting with your allegation about recording the meeting, section 2.05 of OMA (5 ILCS 120/2.05 (West 2016)) provides, in relevant part:

Subject to the provisions of Section 8-701 of the Code of Civil Procedure, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

Under this provision, members of the public may video record public meetings, subject to the public body's authority to implement reasonable rules governing the right to record. The Attorney General has issued a binding opinion concluding that a public body may limit the public's right to record an open meeting only pursuant to rules that the public body has adopted, "and then only to the extent that those rules are designed to prevent disruptions or avoid safety hazards and do not unduly interfere with the right to record." Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, issued June 5, 2012, at 4 (concluding that a board rule that required a person who wished to record an open meeting to provide advance notice was unreasonable).

This office has reviewed the video recording pertaining to your first claim. The recording reflects that you conveyed to the Council that you were recording the meeting. You then had an exchange with certain members of the Council regarding your right to record the meeting until a Council member directed the discussion to a different topic. While certain members of the Council initially objected to your recording of the meeting, the video recording demonstrates that the Council subsequently permitted you to continue recording. Consequently, your Request for Review does not allege facts sufficient to support the allegation that the Council prohibited you from exercising your right to record an open meeting pursuant to section 2.05 of OMA.

With regard to your second claim, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. * * * **The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.** (Emphasis added.)

In *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002), the Illinois Appellate Court construed the term "consideration of items not

November 1, 2018

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specifically set forth in the agenda[]" in section 2.02(a) to include "deliberations and discussion [but] not actions taken." Accordingly, a public body may properly discuss and deliberate on subjects that do not appear on a regular meeting agenda, provided that no final action is taken on those subjects. Ill. Att'y Gen. PAC Req. Rev. Ltr. 31408, issued June 20, 2016, at 2 (concluding that public body did not violate OMA by merely discussing topics that did not appear on the agenda during a regular meeting).

Here, you alleged that the Council created an agenda item during the regular meeting so that the Council Secretary, Michael Beyer, could respond to your public comments, but you did not provide information indicating that the Council voted or otherwise took final action on the added agenda item. Consequently, your Request for Review did not set forth facts sufficient to support the allegation that the Council violated section 2.02(a) of OMA.

With regard to the meeting minutes, section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides that "[a]ll public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording." Section 2.06(b) (5 ILCS 120/2.06(b) (West 2016)) further provides, in pertinent part:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body.

This office has reviewed the e-mail and attached minutes that a member of the Council shared among Ogden International staff the day after the meeting in question. As you highlighted, the Council had yet to approve the minutes. While OMA requires that a public body approve meeting minutes within a specific timeframe, and to make those minutes available to the public within 10 days after their approval, it does not prohibit the internal circulation of any draft minutes among a public body's staff prior to their final approval. Consequently, the claim that the Council circulated unapproved minutes is insufficient to allege that the Council violated OMA. Further, although you alleged that the unapproved minutes are inaccurate, that claim is premature, as minutes are subject to change until they are approved by the public body.

Lastly, as to your claim that Mr. Ramos provided "inaccurate direction and legal advice" to the Council regarding the requirements of FOIA[,]⁴ you provided a copy of an e-mail

⁴E-mail from [REDACTED] to [Public Access Counselor] (October 19, 2018).

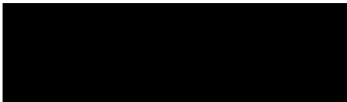

November 1, 2018

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from Mr. Ramos to the Council but did not allege any specific FOIA or OMA violation related to that correspondence. Because you neither set forth facts indicating that the e-mail evinced an OMA violation nor alleged that the Council/Ogden International improperly denied a FOIA request that you submitted,⁵ this office has not determined that no further action is warranted as to that claim.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Mr. David Ramos
President
Ogden International Local School Council
OgdenLSC@gmail.com

⁵Section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2016)) sets forth the following requirements for a Request for Review of an alleged FOIA violation:

A person whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include (i) a copy of the request for access to records and (ii) any responses from the public body.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 2, 2018



P.O. Box 585
Pecatonica, Illinois 61063

Via electronic mail

Mr. Brian Boomer
FOIA Officer
Pecatonica Township
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com

RE: OMA Request for Review – 2018 PAC 51413

Dear [REDACTED] and Mr. Boomer:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Pecatonica Township Board (Board) violated the requirements of OMA in connection with its December 19, 2017, meeting by prohibiting a member of the public from addressing the Board during the public comment portion of the meeting pursuant to an unreasonable established and recorded rule.

On January 25, 2018, [REDACTED] submitted this Request for Review alleging that that the Board did not allow him to provide public comment at its meeting on December 19, 2017. This office construed the Request for Review as alleging a violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." On February 6, 2018, this office sent a copy of the Request for Review to the Board and requested a written response to [REDACTED] allegation, together with copies of Board's rules governing public comment and the December 19, 2017, meeting agenda and minutes. Having

██████████
Mr. Brian Boomer
November 2, 2018
Page 2

received no response, this office sent a second letter to the Board on February 23, 2018, seeking the same information. On March 2, 2018, the Board's attorney, Mr. John Nelson, informed this office by telephone that ██████████ was told he could not provide public comment during the Board's December 19, 2017, meeting because he tried to sign up to speak 11 minutes before the meeting began. On April 20, 2018, the Board provided a written response and copies of the meeting agenda and minutes. On April 23, 2018, this office forwarded a copy of the Board's response to ██████████; he did not reply. On April 24, 2018, the Board provided a copy of the ordinance setting forth its public comment rules.¹

DETERMINATION

Under the plain language of section 2.06(g) of OMA, a public body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly tailored to serve significant governmental interests. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable limitations on public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4.

A rule that promotes order by requiring members of the public to sign up in advance to address a public body does not violate the First Amendment to the United States Constitution provided that it is reasonable in time and scope. *Timmon v. Jeffries*, No. 1:08-CV-645, 2009 WL 270043, at *3 (W.D. Mich. Jan. 30, 2009) (collection of sign-up forms immediately before public comment portion of meeting was a permissible narrowly tailored restriction); *see also Bach v. School Board of City of Virginia Beach*, 139 F. Supp. 2d 738, 741 (E.D. Va. 2001) (requiring speakers to sign up in advance of meeting is a reasonable content neutral regulation). However, an advance sign up rule that is enforced to prevent a member of the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the board was required to post its agenda, imposed an unreasonable restriction on public comment); Ill. Att'y Gen. PAC Req. Rev. Ltr. 50470, issued April 18, 2018, at 5 (rejecting a three-day advance sign up requirement and stating: "A sign up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board could accomplish the

¹Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018).

Mr. Brian Boomer
November 2, 2018
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same goal of running a timely and orderly meeting, but in a much less restrictive manner."'). *Compare with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39640, issued June 22, 2016, at 3 (rule requiring prospective commenters to sign up by start of meeting did not unreasonably restrict the right to public comment).

In the Board's response to this office, Trustee Brian Boomer stated:

According to the Pecatonica Township's public speaking ordinance, an individual that wishes to address the board has to sign in to do so no later than 15 minutes prior to a meeting. In order to ensure that there is no confusion as to our policy, and to avoid possible complaints, we have been striving to be consistent in its implementation. [REDACTED] attempted to sign up to speak at the December 19, 2017 meeting after the deadline had passed, an act to which I was personally a witness, and therefore was unable to speak. The policy has been explained to [REDACTED] and he has successfully signed in to speak at subsequent meetings.^[2]

The Board also sent a copy of its ordinance requiring advance sign up for public comment, which states, in relevant part:


Nonmembers may address the Pecatonica Township Board if a written request is submitted to the Pecatonica Township Board for the meeting the person requesting to speak at, no less than fifteen (15) minutes prior to the start of the regular meeting of the Pecatonica Township Board.^[3]

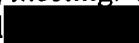
The Board also clarified that the vote to change the sign up deadline from 30 minutes to 15 minutes in advance of meetings was held on September 19, 2017, but that the ordinance is not dated until March 20, 2018, because "a previous clerk had not filed a copy of the amended public speaking ordinance."⁴ This office's review of the minutes from the September 19, 2017, meeting confirmed that they state: "After a brief discussion, Brian Boomer motioned to amend the time

²Letter from Brian Boomer, FOIA Officer, Pecatonica Township, to Marie Hollister, Assistant Attorney General, Public Access Bureau (April 20, 2018).

³Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018).

⁴E-mail from Brian Boomer, FOIA Officer, Pecatonica Township, to Marie Hollister (April 24, 2018).



Mr. Brian Boomer
November 2, 2018
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requirement in the ordinance for a non-member to sign in prior to a meeting to 15 mins. * * * Motion Carried."⁵ Thus, the 15 minute advance sign up requirement was an established and recorded Board rule at the time of its December 19, 2017, meeting. Accordingly, the Board did follow its established and recorded rule when it prevented  from addressing the Board at that meeting.

This office concludes, however, that in the absence of a compelling government interest, terminating sign-up for public comment 15 minutes before the start of Board meetings unreasonably restricts public comment, and consequently such a rule violates OMA. The Board's response to this office did not explain why it considers a 15 minute advance sign up rule necessary to ensure that its meetings are conducted efficiently or to maintain order. Further, it is not clear how denying the opportunity to speak to people who arrive less than 15 minutes before a meeting promotes any other significant government interest. To the contrary, requiring a written request to address public officials and setting an arbitrary early cut-off time for signing up potentially limits or reduces the number of people who are allowed to comment with no concomitant benefit to the public body. The Board's rules limit each member of the public to three minutes of speaking time and allow a maximum of 30 minutes total for public comment.⁶ Further limitation on public comment, including the advance sign-up requirement, seems unnecessary to promote decorum or the smooth running of a meeting. This office requests that the Board review and revise its ordinance regulating public comment accordingly.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (312) 793-0865 or the Chicago address listed on the first page of this letter.

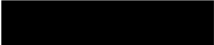
Very truly yours,


MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau

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⁵Pecatonica Township Board, Meeting, September 19, 2017, Minutes 2.

⁶Pecatonica, Ill., Ordinance 2017- "Regulation of Non-Member Address to the Pecatonica Township Board"(Undated).


Mr. Brian Boomer

November 2, 2018

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cc: *Via electronic mail*
Mr. Joseph Musso, Supervisor
Pecatonica Township Board
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 2, 2018

Via electronic mail
Mr. James B. Clarage
Loda Township Assessor
[REDACTED]

RE: OMA Request for Review – 2018 PAC 55490

Dear Mr. Clarage:

The Public Access Bureau has received your Request for Review, pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (2016)), alleging possible violations of OMA by the Loda Township (Township) Board of Trustees (Board). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted in this matter.

On October 26, 2018, the Public Access Bureau received your Request for Review alleging that the Board violated OMA on multiple occasions. Specifically, you alleged the Board's agendas for its regular meetings on August 28, 2018, and September 25, 2018, violated OMA because the Board did not include the locations of the meetings or telephone numbers for the public to contact the Township. You also alleged that the August agenda was "not posted and [did] not referenc[e] or show[] any old or new business."¹ You further alleged that the Board violated OMA because the agenda for the October 23, 2018², regular meeting did not list items that were requested to be placed on the agenda by you and by an attorney identified in your Request for Review.

¹OMA – Request for Review by Public Access Counselor Form from James Clarage, Assessor, Loda Township (October 26, 2018).

²The agenda that you provided this office for the October Board meeting lists the meeting as taking place on Tuesday, October 23, 2018; however, your Request for Review states that the October Board meeting took place on October 25, 2018.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor[,]" which "must include a summary of the *facts supporting the allegation*." (Emphasis added.) The public policy underlying OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly," and that "citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). (Emphasis added.)

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) states that a public body must post "[a]n agenda for each regular meeting * * * at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." At a regular meeting, a public body may consider "items not specifically set forth in the agenda[;]"³ however, the agenda must "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." 5 ILCS 120/2.02(c) (West 2016).

You alleged that the agenda for the August 28, 2018, meeting was not posted, but the September meeting agenda "was posted per OMA Case # 2018 PAC 54308 that had to be complied with by order of the Attorney General's Office."⁴ However, this office's determination in 2018 PAC 54308 concerned the Board's failure to approve meeting minutes. Ill. Att'y Gen. PAC Req. Rev. Ltr. 54308, issued September 24, 2018. Thus, your allegation concerning the agenda posting is unclear and; did not provide any facts demonstrating that the agenda was not posted at the Township's principal office or at the location of the meeting at least 48 hours before the meeting. With respect to your allegation that the Board's agendas did not provide the location of the meetings, the Public Access Bureau has previously determined that because OMA requires a public body to post the agenda at the principal office of the public body and at the location of the meeting, a public body is not required to include the address of the location of the meeting on the agenda. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 50231, issued October 30, 2017, at 2. Further, OMA does not require that the Board list the Township's telephone number on its meeting agendas.

Next, you alleged that the Board violated OMA because it did not list the items that you and the attorney requested to be added to the agenda for the October 23, 2018, meeting. This office has concluded that OMA does not require a public body to list items on a meeting agenda when requested to do so by members of the public. See Ill. Att'y Gen. PAC Req. Rev.

³5 ILCS 120/2.02(a) (West 2016)

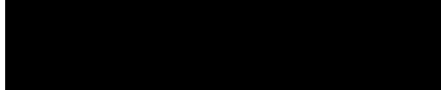
⁴OMA Request for Review by Public Access Counselor submitted by James Clarage, Loda Township Assessor (October 26, 2018).

Mr. James B. Clarage
November 2, 2018
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Ltr. 35102, issued May 11, 2015, at 1. Similarly, no provision of OMA requires a public body to list on the agenda those items requested by a public official with the public body. You also allege that the Board used "New Business" as an agenda item and that use of "Old Business" as an agenda item allowed items to disappear without being addressed. The Illinois Appellate Court has held that generic agenda items, such as "New Business" and "Old Business" do not provide sufficient notice to the public if the public body takes final action on a matter described only by those terms on an agenda. *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (agenda item "NEW BUSINESS" did not provide sufficient notice to adopt a resolution for an alternative benefit program). Simply listing "New Business" or "Old Business" on an agenda does not violate the requirements of OMA. Although the Board's agendas contained these types of generic agenda items, your Request for Review did not provide any facts indicating that the Board took final action on any items at its meetings pursuant to those agenda items. Because you have not provided sufficient facts to support your allegations that the Board violated OMA on the dates specified in your Request for Review, this office has determined that no further action is warranted on this matter.

This matter is closed. If you have any questions, please contact me at mhartman@atg.state.il.us, (217) 782-9054, or the Springfield address on the first page.

Very truly yours,


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

55490 o no fi war mun

cc: *Via electronic mail*
Ms. Tracy M. Rodriguez
Loda Township Clerk
P.O. Box 475
Loda, Illinois 60948
tracyrodriguez@gmail.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 5, 2018

Via electronic mail



RE: FOIA Request for Review – 2013 PAC 26056;
OMA Request for Review – 2013 PAC 26307

Dear [REDACTED]

On November 2, 2018, you informed the Public Access Bureau that this office could close the files concerning your September 13, 2013, Request for Review regarding your August 23, 2013, Freedom of Information Act (5 ILCS 140/1 *et seq.*) request to the Illinois Torture Inquiry and Relief Commission (Commission) and your October 3, 2013, Request for Review concerning an allegation that the Commission violated the Open Meetings Act (5 ILCS 120/1 *et seq.*) at its October 1, 2013, meeting. Accordingly, these files are closed. Please contact me at (217) 524-7958 or at LHarter@atg.state.il.us if you have questions.

Very truly yours,



LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

26056 f wdrawn sa
26307 o wdrawn sa

cc: *Via electronic mail*
Mr. Rob Olmstead
Illinois Torture and Relief Commission
robert.olmstead@illinois.gov



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 5, 2018

Via electronic mail



Via electronic mail

Ms. Alexandra B. Ruggie
Assistant City Attorney
Law Department
Morton Civic Center
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
aruggie@cityofevanston.org

RE: OMA Request for Review – 2018 PAC 54340

Dear [REDACTED] and Ms. Ruggie:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the City Council (City Council) of the City of Evanston (City) did not improperly restrict [REDACTED] from addressing its members during the public comment portion of its July 23, 2018, meeting.

On August 5, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the City Council violated OMA during its July 23, 2018, meeting by denying her time to speak during public comment. Specifically, [REDACTED] alleged that when another member of the public attempted to cede her public comment time to her, the City Council barred the commenter from doing so, despite the absence of a rule concerning the ceding of speaking time to another. To establish that the City Council had no such rule at the time of its July 23, 2018, meeting, [REDACTED] provided this office with a copy of the City Council's August 6, 2018, Rules Committee (Committee) meeting agenda, which indicated that the Committee would be considering whether to amend the City Council's rules to prohibit the

Ms. Alexandra B. Ruggie

November 5, 2018

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ceding of time during public comment, unless an exception was granted by the mayor.¹ [REDACTED] also provided this office with a link to a video recording of the meeting,² and further alleged: "Ceding time to speakers has long been allowed and a customary practice at City Council meetings. In fact, that very same evening * * *, the Mayor Pro Tem, Fiske, had allowed 2 lawyers to cede time one to the other."³

On August 9, 2018, this office sent a copy of the Request for Review to counsel for the City Council and requested a copy of the City Council's established and recorded rules governing public comment for this office's review, together with a written response to [REDACTED] allegation. In particular, this office asked the City Council if it restricted [REDACTED] ability to address its members during the public comment portion of its July 23, 2018, meeting, and, if so, whether it did so in accordance with a reasonable, established, and recorded rule. On August 23, 2018, the City Council provided this office with those materials and copies of the agenda, meeting packet, and public comment sign-in sheets for the July 23, 2018, meeting, arguing that it did not violate OMA. On August 28, 2018, [REDACTED] submitted a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that "[t]he plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Such rules, however, must tend to accommodate, rather than unreasonably restrict, the right to address public officials. See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6 ("[T]he primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory

¹City of Evanston Rules Committee, Agenda Item VIII, AMEND COUNCIL RULES TO PROHIBIT OF CEDING TIME DURING PUBLIC COMMENT, UNLESS EXCEPTION GRANTED BY MAYOR (August 6, 2018).

²City of Evanston, IL, *City Council Meeting 7/23/2018*, YouTube (July 24, 2018), <https://www.youtube.com/watch?v=kAb7sOXfWtU&feature=youtu.be>.

³E-mail from [REDACTED] to Whom It May Concern (August 5, 2018).

██████████
Ms. Alexandra B. Ruggie

November 5, 2018

Page 3

right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings.").

In its response to this office, the City Council argued that it did not violate OMA in barring ██████████ from addressing its members during the public comment portion of its July 23, 2018, meeting because its public comment rules require advance sign up by a prospective commenter. Although the commenter who attempted to cede her time to ██████████ had signed up before the meeting, ██████████ had not done so. ██████████ replied by alleging that the mayor pro tempore had prohibited her from addressing the City Council because of the anticipated content of her comments, and had "selectively applied a 'rule' which she created on the spot that evening only to [her]."⁴

The City Council's argument relies on the following portion of its public comment rules: "Interested persons shall sign their name, address and the agenda item or other topic to be addressed on a designated citizen participation sheet."⁵

Although the requester alleged the lack of a rule concerning the ceding of time and did not specifically challenge the reasonableness of the City Council's sign-up rule, the purpose of the Office of the Public Access Counselor is "to provide advice and education with respect to the interpretation and implementation of the Freedom of Information Act and [OMA]."⁶ This office notes that the Attorney General has issued a binding opinion concluding that "the language of section 2.06(g) does not support a requirement that a person must provide his or her complete home address prior to being allowed to make a public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 6-7. This office has also issued multiple non-binding determinations concluding that a public body may not require prospective commenters to identify the subject(s) of their comments when signing up to speak. *See, for instance*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 50470, issued April 18, 2018, at 5-6 ("[R]equiring a member of the public to set forth the subject matter of his or her comment in writing in advance of a meeting would tend to restrict rather than accommodate the statutory right of individuals to address the Board, and may create a chilling effect on speech at public meetings."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 37503, issued April 8, 2016, at 3 (noting that such a requirement could be enforced to improperly restrict the content of speech). Accordingly, the City Council should consider revising its public comment rules in accordance with those conclusions.

⁴E-mail from ██████████ to [Joshua] Jones (August 28, 2018).

⁵City of Evanston, *Rules and Organization of the City Council of the City of Evanston*, §6.2 (July 12, 2018).

⁶15 ILCS 205/7(a) (West 2016).

Ms. Alexandra B. Ruggie

November 5, 2018

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This office's review of the video recording of the July 23, 2018, City Council meeting confirmed [REDACTED] claim that the City Council allowed another commenter to cede his time, but this office's review of the public comment sign-in sheet verified that the person to whom the commenter ceded his time had also signed up to address the City Council that evening. Additionally, this office's review confirmed the allegation in [REDACTED] reply that an individual who had not signed up to address the City Council spoke on behalf of Mr. Cam Davis, a candidate for the Metropolitan Water Reclamation District who had signed up to comment but who appears not to have been in attendance at the meeting. However, the commenter merely read a statement prepared by Mr. Davis. Thus, the City Council did not allow any commenter to do what [REDACTED] attempted to do: address the City Council with her own remarks without having signed up to do so.

In addition, the City Council's public comment rules provide: "The maximum time period for citizen participation is forty-five minutes. If there are more than 15 speakers, the Mayor will allocate time among the speakers to ensure that citizen comment does not exceed forty-five (45) minutes."⁷ The sign-up sheets provided by the City Council in its response show over 80 signatures of persons wishing to address the City Council on July 23, 2018, so even with limiting each speaker to one minute the City Council had more people signed up to speak than could fit within the usual time frame.

As to the argument that the Committee would not have had to consider whether to amend the City Council's public comment rules during its August 6, 2018, meeting to prohibit the ceding of time if the City Council already had a rule to that effect, it appears that the Committee's discussion during that meeting concerned the extent to which members of the public who had signed up to comment could cede their time to other members of the public *who had also signed up to comment*.⁸ The City Council's public comment rules provide a maximum of three minutes per speaker;⁹ the Committee discussed that if 45 members of the public had signed up to speak, causing each to be apportioned one minute, a person who had signed up to speak could be ceded minutes from no more than two other people who had also signed up to speak,

⁷City of Evanston, *Rules and Organization of the City Council of the City of Evanston*, §6.2 (July 12, 2018).

⁸See Bill Smith, *Clock runs out on shorter meeting debate*, Evanston Now (Aug. 7, 2018, 10:16 a.m.), <https://evanstonnow.com/story/government/bill-smith/2018-08-07/80267/clock-runs-out-on-shorter-meeting-debate>.

⁹City of Evanston, *Rules and Organization of the City Council of the City of Evanston*, §6.2 (July 12, 2018).

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November 5, 2018


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bringing the recipient's total speaking time up to the three minute limit.¹⁰ Because the fact that [REDACTED] had not signed up to address the City Council at its July 23, 2018, meeting provided a valid basis for the City Council to decline to permit her to participate in public comment on that date, regardless of other considerations pertaining to ceding time, her argument that the Committee's August 6, 2018, discussion indicates that the City Council improperly restricted public comment during the July 23, 2018, meeting is unavailing.

This office notes that it is significant that the City Council's public comment rules do not specify a time by which a prospective commenter must sign up to speak during a meeting, and that there is no indication that the City Council cut off the time to sign up before the July 23, 2018, meeting started. An advance sign up rule that is enforced to prevent a member of the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the board was required to post its agenda, imposed an unreasonable restriction on public comment); and Ill. Att'y Gen. PAC Req. Rev. Ltr. 50470, issued April 18, 2018, at 5 (rejecting a three-day advance sign up requirement and stating: "A sign up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board could accomplish the same goal of running a timely and orderly meeting, but in a much less restrictive manner."). However, the Public Access Bureau has previously determined that a rule requiring prospective commenters to sign up by the start of meeting did not unreasonably restrict the right to public comment because it promoted order by establishing the sequence and number of commenters. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39640, issued June 22, 2016, at 3.


Because the City Council barred [REDACTED] from addressing its members during its July 23, 2018, meeting in accordance with an established and recorded rule requiring a prospective commenter to sign up before being allowed to speak, this office concludes that the City Council did not violate section 2.06(g) of OMA during that meeting in connection with [REDACTED] intended remarks.

¹⁰See Bill Smith, *Clock runs out on shorter meeting debate*, Evanston Now (Aug. 7, 2018, 10:16 a.m.), <https://evanstonnow.com/story/government/bill-smith/2018-08-07/80267/clock-runs-out-on-shorter-meeting-debate>.


Ms. Alexandra B. Ruggie
November 5, 2018
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2018

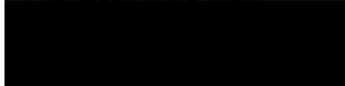
Via electronic mail



Via electronic mail



Via electronic mail



The Honorable JoAnn Quigley
Supervisor
Wesley Township Board of Trustees
21333 West Ballou Road
Wilmington, Illinois 60481

Re: OMA Requests for Review – 2018 PAC 53822; 2018 PAC 53830;
2018 PAC 53873

Dear [REDACTED] and Ms. Quigley:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). This office has consolidated three Requests for Review in this determination because they involve similar allegations concerning the same meeting. For the reasons discussed below, the Wesley Township (Township) Board of Trustees (Board) improperly restricted members of the public from addressing the Board during its June 12, 2018, meeting.

[REDACTED]
The Honorable JoAnn Quigley

November 7, 2018

Page 2

On June 29, 2018, [REDACTED] and [REDACTED] submitted Requests for Review (2018 PAC 53822; 2018 PAC 53830), alleging that (1) during the Board's June 12, 2018, meeting a member of the public addressed the Board but was repeatedly interrupted by members of the Board, which restricted this person's ability to fully provide public comment, and (2) not all of the individuals who wished to address the Board were given that opportunity. On July 3, 2018, [REDACTED] submitted a Request for Review with the same allegations. In support of their allegations, all three of the Requests for Review included a link to a recording that included the public comment portion of the June 12, 2018, meeting.¹ The Requests for Review also alleged that the Board's rules governing public comment during meetings violated OMA by improperly restricting a person's right to address individual Board members.

This office sent copies of the Requests for Review to the Board and asked the Board to provide this office with a copy of any established and recorded rules governing public comment during meetings and copies of any audio or video recordings of the June 12, 2018, meeting, along with a written response to the allegations in these Requests for Review. The Board did not respond to the Public Access Bureau's request. On July 24, 2018, this office forwarded a second copy of the Requests for Review to the Board and requested that the Board promptly respond. The Board did not respond to this office's second request for information, either.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

¹Wesley Township Board of Trustee, Meeting, June 12, 2018, available at https://www.dropbox.com/home?preview=June+12+2018+Part+2_Segment_0_x264.mp4 (last visited August 16, 2018), 9:24-14:10.

[REDACTED]
The Honorable JoAnn Quigley
November 7, 2018
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Public Comment

The Board has not responded to this office's written requests for copies of the above-mentioned records together with a written response to the allegations in these Requests for Review. Section 3.5(b) of OMA (5 ILCS 120/3.5(b) (West 2016)), expressly requires the Board to provide copies of the records for the Public Access Counselor's confidential review and to otherwise cooperate with this office.² Thus, by failing to respond to the Public Access Counselor the Board has violated the requirements of OMA.

This office, however, has reviewed a video recording of a portion of the open session of the June 12, 2018, meeting that was provided by [REDACTED] and [REDACTED] with their Requests for Review. Although only members of the Board can be seen on the video recording, the members of the public who addressed the Board, and attempted to address the Board, can be heard clearly on the audio of the recording. The audio of the public comment portion demonstrates that the first member of the public who addressed the Board asked questions concerning the procedures to rent certain areas in a park. The recording showed that the Board permitted her to complete her comments then directed her to a particular form that it indicated was in the meeting room to answer her questions.³

The audio of the recording demonstrated that another member of the public then was called upon to speak and was informed that she had three minutes to address the Board. This individual began reading the Township Supervisor's acceptance speech, then attempted to cite concerns about the Township's handling of FOIA requests and other perceived Township and Board issues. During this portion of the public comment segment, however, members of the Board continuously interrupted her by stating that her comments were inappropriate and directed her to address the Board as a whole, which a member of the Board indicated was a part of its rules governing public comment during meetings. The recording shows that while this individual was still within the allotted three minutes to address the Board, the Supervisor used a

²Section 3.5(b) of FOIA provides: "Within 7 working days after receipt of the request for review, the public body shall provide copies of the records requested and shall otherwise fully cooperate with the Public Access Counselor." The Board should be mindful of its obligation to comply with this provision in the future.

³Although the public has the right to address comments to a public body during open meetings, public body members are under no obligation to respond to questions and comments during the meeting; public comment is a time for citizens to be heard. See, e.g., Ill. Att'y Gen. Req. Rev. Ltr. 37391, issued January 11, 2016 (concluding that the public body's practice of answering pre-submitted questions violated OMA because citizens have a right to address the public body and public officials are not required to provide responses or answers during public comment).

gavel in an attempt to prohibit further speech and when the individual did not stop speaking, the Board abruptly adjourned the meeting.

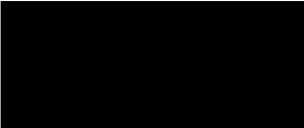
Although this individual made critical remarks concerning the Township Supervisor,⁴ it is not apparent from this office's review of the video recording that those comments disrupted the meeting. The recording shows that this individual was not attempting to comment outside of the designated public comment period and did not act in a profane or disorderly manner that interfered with the decorum of the meeting. Although this individual did speak in a raised voice at times, it was only after the Board attempted to limit her speech. These repeated interruptions unreasonably interfered with this individual's statutory right to address Board members. The audio of the recording also demonstrates that both before and after the Board adjourned the meeting, at least one other member of the public stated that he wished to address the Board, but he was not allowed to do so. Accordingly, this office concludes that the Board improperly restricted these individuals from addressing the Board in violation of section 2.06(g) of OMA.

Rules Governing Public Comment

The Requests for Review also alleged that the Board's rules governing public comment violate the requirements of OMA by improperly restricting a person's right to address individual Board members. The Board did not provide this office with a copy of its established and recorded rules governing public comment during meetings. This office notes, however, that it has previously determined that a public body improperly restricted an individual's right to public comment when the public body enforced a rule that required public comments to be addressed to the board as a whole as opposed to individual board members. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2014, at 5-6. In that matter, this office emphasized:

Even if [named person] had addressed an individual Council member, section 2.06(g) of OMA provides that "[a]ny

⁴It is also worth noting that this office has previously reviewed a public body's decision to prohibit a speaker from completing his public comments based on a rule that prohibited "personal attacks against others" or "rude or slanderous remarks." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3. In that matter, this office emphasized: "[W]hether a remark constitutes a 'personal attack' is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3. Because the speaker's attempt to comment at the meeting did not appear to create a disturbance or interfere with the efficiency of the proceedings, this office concluded that the public body improperly prohibited him from completing his comments. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 4.



The Honorable JoAnn Quigley
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person shall be permitted an opportunity to address *public officials* under the rules established and recorded by the public body." (Emphasis added.) Although a public body may establish reasonable "time, place, and manner" rules to maintain order and decorum, it is unclear that prohibiting members of the public from addressing specific public officials at a meeting is necessary to maintain order and decorum.

Likewise, here the recording shows a member of the Board indicating that its rules prohibit members of the public from addressing individual public officials at a meeting. The Board has provided no support to demonstrate why this rule is necessary to promote order and decorum at meetings, or to further any other significant governmental interest. Accordingly, this office requests that the Board permit members of the public to address individual Board members at future meetings. To the extent that the Board has established and recorded rules governing public comment, we suggest that it revise its public comment rules to remove any such prohibition.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. This letter serves to close these matters. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55530

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Village of Hammond Board of Trustees (Board) violated OMA in connection with its October 18, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

Your Request for Review alleges that the Board, on which you serve, violated OMA in connection with its October 18, 2018, special meeting (at which you were absent) by voting "to pursue financing at the local bank and to hire the local contractor for the construction of a new workshop"¹ under the agenda item "Action re: Construction of New Workshop."² You noted that the heading of the agenda stated that the meeting was "for the purpose of considering

¹Letter from [REDACTED] to [the Public Access Bureau] (October 29, 2018).

²Board of Trustees of the Village of Hammond, Agenda Item 4, Action re: Construction of New Workshop (October 18, 2018).

building a new workshop."³

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Therefore, allegations concerning improper bidding practices for public works projects are not subject to review by this office.


Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) generally requires a public body to post an agenda at least 48 hours in advance of a special meeting. Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) additionally provides, in relevant part: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that — that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

In this instance, the agenda item "Action re: Construction of New Workshop" gave notice that the Board was contemplating taking a vote in open session on the building of a new workshop. Although the agenda did not state that the Board was pursuing financing at a local bank or hiring a local contractor to perform the work, those appear to be specific details of the construction project, rather than the broader "general subject matter" that the Board was required to set out on the agenda. Furthermore, the language "considering building a new workshop" adequately conveyed that the Board might vote that evening to move forward with the construction. Because your Request for Review does not provide a summary of facts

³ Board of Trustees of the Village of Hammond, Agenda heading (October 18, 2018).



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sufficient to support the allegation that the Board violated OMA in connection with the agenda for its October 18, 2018, meeting, this office has determined that no further action is warranted in this matter.

If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: The Honorable Berrie Slade
Village President
Village of Hammond
105 East 1st Street
Hammond, Illinois 61929



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 9, 2018

Via electronic mail
Mr. Daniel L. Charleston

[REDACTED]
103 Main Street
Westmont, Illinois 60559
[REDACTED]

Via electronic mail
Ms. Terry L. Hodges
Hodges, Loizzi, Eisenhammer,
Rodick & Kohn LLP
3030 Salt Creek Lane
Suite 202
Arlington Heights, Illinois 60005
thodges@hlerk.com

RE: OMA Request for Review – 2012 PAC 21622

Dear Mr. Charleston and Ms. Hodges:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Westmont Community Unit School District No. 201 (District) Board of Education (Board) held an improper closed session discussion during its August 21, 2012, meeting.

On September 27, 2012, this office received Mr. Daniel L. Charleston's Request for Review alleging that the Board improperly discussed matters concerning a retiree and strategy related to staffing a position. On October 10, 2012, this office sent the Board a copy of Mr. Charleston's Request for Review and asked it to respond to the allegations that the Board violated OMA. On October 24, 2012, counsel for the Board provided this office with a written answer and copies of the open and closed session minutes of the August 21, 2012, meeting. On October 26, 2012, this office sent Mr. Charleston a copy of the Board's answer; he did not reply.

Mr. Daniel L. Charleston
Ms. Terry L. Hodges
November 9, 2018
Page 2

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2010). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2010)) provides that all meetings of a public body shall be open to the public unless the subject of the discussion falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2010)). The section 2(c)(1) exception permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." Section 2(b) of OMA (5 ILCS 120/2(b) (West 2010)) states that "[t]he exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope."

In construing section 2(c)(1) of OMA, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 43077, issued November 3, 2016 (section 2(c)(1) does not authorize general discussions of employment positions). Rather, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3).

In its response to this office, the Board stated that it went into closed session under section 2(c)(1) of OMA to discuss health insurance benefits for a retiree, the retirement of a particular employee in the business office, and the resulting vacancy. The Board asserted that the discussion of the retiree was permitted because the definition of "employee" in section 2(d) of OMA (5 ILCS 120/2(d) (West 2010)) is not limited to current employees. The Board's response to this office explained that the closed session discussion "concerned a dispute with a former employee over health insurance benefits to be paid under an employment agreement."¹ Because the Board's discussion of the former employee concerned the compensation of the employee pursuant to an employment agreement that originated in an employer-employee relationship, this office concludes that the Board's discussion on that topic was within the scope of the section 2(c)(1) exception cited by the Board.

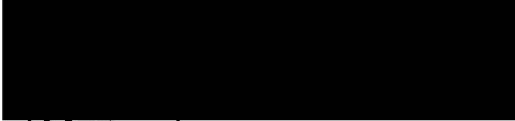
¹Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matthew Sebek, Assistant Attorney General, Public Access Bureau (October 24, 2012), at 1.

Mr. Daniel L. Charleston
Ms. Terry L. Hodges
November 9, 2018
Page 3

With respect to the discussion of matters concerning the employee in the business office, the Board asserted its discussion was proper under section 2(c)(1) of OMA because it concerned the retiring employee's performance and "the appointment and compensation of the employee's replacement."² Based on this office's review of the Board's answer, the closed session minutes, and the affidavit of the District's business manager, it appears that the Board deviated in its discussions of the particular retiring employee to the position in general and the compensation for the position. Although discussions concerning the specific retiring employee were authorized by section 2(c)(1), discussion of related budgetary matters and staffing of the employment position in general, as opposed to an individual candidate for the position, are not within the scope of the exception. Accordingly, this office concludes that the Board violated section 2(a) of OMA. Because counsel for the Board stated that she had discussed the narrow scope of the section 2(c)(1) exception with the Board at its September 11, 2012, training, no further remedial action is needed. This office reminds the Board to confine its closed session discussions to topics authorized by the exceptions pursuant to which it enters closed session, and to construe those exceptions narrowly.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (217) 782-9054, mhartman@atg.state.il.us, or at the Springfield address on the bottom of the first page of this letter.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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²Letter from Terry L. Hodges, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matthew Sebek, Assistant Attorney General, Public Access Bureau (October 24, 2012), at 1.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 9, 2018

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Alan Zais
Executive Director
Winnebago County Housing Authority
3617 Delaware Street
Rockford, Illinois 61102
alanzais@wchauthority.com

RE: OMA Requests for Review – 2018 PAC 55365

Dear [REDACTED] and Mr. Zais:

On October 18, 2018, the Public Access Bureau received a Request for Review from [REDACTED] pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Winnebago County Housing Authority Board (Board) violated OMA by failing to post meeting minutes on its website. Specifically, [REDACTED] alleged that the Board had not posted minutes of any meetings that were held after January 19, 2017. On October 22, 2018, this office forwarded a copy of the Request for Review to the Board and asked the Board to provide a written response addressing the allegations, and to clarify whether the individuals who maintain the Housing Authority's website are its full-time staff members. On October 30, 2018, the Board's executive director responded that all meeting minutes were now available on the Board's website and identified the individual who maintains the website. On October 31, 2018, this office forwarded a copy of the Board's response to [REDACTED] she did not reply.

OMA requires all public bodies to "keep written minutes of all their meetings," including "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." 5 ILCS 120/2.06(a), (a)(3) (West 2016). Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) states a public body "shall approve the minutes of its open

[REDACTED]
Mr. Alan Zais
November 9, 2018
Page 2

meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later." Section 2.06(b) of OMA further provides:

a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.

The Board is the Housing Authority's governing body and the Board's response to this office not dispute that the Housing Authority's website is maintained by a full-time staff member. Therefore, section 2.06(b) requires the Board to post minutes of its meetings on the Housing Authority's website. Based on this office's review of the website, meeting minutes are now posted through September 19, 2018. Because the Board has not yet held its November 2018 meeting, there is no indication that the Board has approved minutes of its October 2018 meeting. By posting the requisite meeting minutes on its website in accordance with section 2.06(b) of OMA, the Board has resolved the underlying allegation in this matter.

Accordingly, this letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,

[REDACTED]
LEO DRAWS
Assistant Attorney General
Public Access Bureau

55365 o inf r mun



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 13, 2018

Via electronic mail

[REDACTED]

The Honorable Steve Ehrhart
Chairman
Wayne County Board
P.O. Box 187
Fairfield, Illinois 62837

RE: OMA Request for Review – 2013 PAC 26962

Dear [REDACTED] and Chairman Ehrhart:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Wayne County Board (Board) improperly discussed certain matters that were outside the scope of the exception—to the general requirement that public bodies conduct business openly—on which it relied to close a portion of its November 14, 2013, meeting.

On November 15, 2013, this office received [REDACTED] Request for Review alleging that the Board improperly discussed insurance negotiations during the closed session portion of its November 14, 2013, meeting. Specifically, [REDACTED] alleged that the Board improperly advised that because its discussion of insurance "dealt with personnel issues it was best to call the meeting closed."¹

On November 25, 2013, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda, minutes, and verbatim recording from the closed session at issue for this office's review, together with a written response to [REDACTED] allegations. The Board provided this office with those materials and a

¹E-mail from [REDACTED] to Public Access (November 15, 2013).

[REDACTED]
The Honorable Steve Ehrhart
November 13, 2018
Page 2

response to [REDACTED] argument on December 17, 2013. On January 16, 2014, this office sent a copy of the Board's response to [REDACTED]; he did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) provides that all meetings of a public body shall be open to the public unless the subject of the discussion falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2012)). The Board's response to the Request for Review argues that it was "justified in discussing the issue of liability insurance outside the hearing of the general public because it was inevitable that a pending lawsuit involving the termination of a county employee [redacted] would be part of the discussion."² Although the Board's response does not specifically identify any exception listed in section 2(c) that it believes permitted that discussion, this office construes the Board's response as arguing that its closed session discussion of insurance was authorized by section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2012)). That exception allows a public body to close its meeting to discuss:

Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016)).

In construing an earlier but substantively identical version of section 2(c)(11) of OMA, Attorney General Hartigan concluded that

[T]he litigation exception may not be utilized to conduct deliberations on the merits of a matter under consideration regardless of how sensitive or controversial the subject matter may be. [Citation.] Section 2 of the Act clearly provides that the only

²Letter from Gary Sloan, Chairman, Wayne County Board, to Ms. Tola Sobitan, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (December 17, 2013).

meetings which may be closed on the basis of the litigation exception are those meetings held *to discuss litigation*.


* * *

[C]onsultations between the public body and its attorney concerning the potential legal impact and the legal ramifications of an item under consideration must be done publicly unless pending, probable, or imminent litigation is *the subject matter of the consultations*. Consequently, once the litigation exception is properly invoked, the only matters which may lawfully be discussed at the closed meeting are the *strategies, posture, theories, and consequences of the litigation itself*. (Emphasis added.) Ill. Att'y Gen. Op. No. 83-026, issued December 23, 1983.³

Based on the assertions made in the response to the Request for Review, along with this office's confidential review of the minutes from the November 14, 2013, closed session, the Board's discussion at the closed meeting concerned the terms of a potential new liability insurance policy. Although the pending lawsuit cited in the Board's response was also mentioned, the closed session discussion did not stay within the scope of the strategies, posture, theories, and consequences of that litigation. Accordingly, this office concludes that the Board violated section 2(a) of OMA by discussing the issue of liability insurance in closed session during its November 14, 2013 meeting.

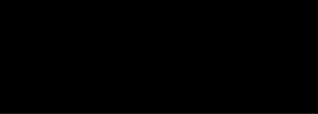
³At the time of the issuance of opinion No. 83-026, section 2 of OMA excepted from the open meeting requirements:

meetings held to discuss litigation when an action against or on behalf of the particular public body has been filed and is pending in a court or administrative tribunal, or when the public body finds that such an action is probable or imminent, in which case the basis for such a finding shall be recorded and entered into the minutes of the closed meeting in accordance with Section 2.06. Ill Rev. Stat. 1981, ch. 102, par. 42(h).


The Honorable Steve Ehrhart
November 13, 2018
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have questions, you may contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter. This correspondence serves to close this matter.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 13, 2018

Via electronic mail



Ms. Dawn M. Hinkle
Canna and Canna, Ltd.
10703 West 159th Street
Orland Park, Illinois 60467-4531

RE: OMA Request for Review – 2014 PAC 27621

Dear [REDACTED] and Ms. Hinkle:

On January 13, 2014, this office received [REDACTED] Request for Review alleging that the Fairmont School District 89 (District) did not timely post the minutes of its October 16, 2013, November 20, 2013, and November 26, 2013, meetings as required under section 2.06(b) of the Open Meetings Act (OMA) (5 ILCS 120/2.06(b) (West 2014)):

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. Beginning July 1, 2006, any minutes of meetings open to the public posted on the

[REDACTED]
Ms. Dawn M. Hinkle

November 13, 2018

Page 2

public body's website shall remain posted on the website for at least 60 days after their initial posting.

On January 22, 2014, this office forwarded a copy of the Request for Review to the District and asked it to respond to [REDACTED] allegation. On February 6, 2014, the District responded that it had approved the minutes of its October 16, 2013, November 20, 2013, and November 26, 2013, meetings on November 20, 2013, and December 18, 2013, but had not posted them on its website until December 23, 2013, and December 30, 2013. Thus, the District acknowledged that it posted the minutes past the 10 day deadline specified in section 2.06(b) of OMA. The District also explained that the minutes were not posted on its website due to an unintentional clerical error.

Because it is undisputed that the District failed to post the minutes of its October 16, 2013, November 20, 2013, and November 26, 2013, meetings within 10 days after approval, this office concludes that the Board did not meet the requirements of section 2.06(b) in this instance. No further corrective action is required because the Board remedied the violation by posting the minutes after receiving the Request for Review.

This file is closed. If you have any questions, you may contact me at (312) 814-5383.

Very truly yours,

[REDACTED]

S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

27621 o 206b minutes improper sd

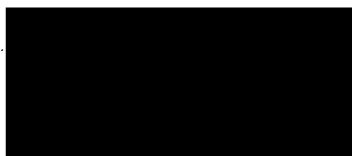


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 13, 2018

Via electronic mail



Via electronic mail

The-Honorable Kathy Carroll-Duda
Mayor
City of Geneseo
115 South Oakwood Avenue
Geneseo, Illinois 61254
kcarrollduda@cityofgeneseo.com

RE: OMA Request for Review – 2014 PAC 29411

Dear [REDACTED] and Ms. Carroll-Duda:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the City Council (City Council) of the City of Geneseo (City) violated the requirements of OMA in connection with its April 22, 2014, special meeting.

On May 16, 2014, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the City Council held a special meeting on April 22, 2014, that violated the requirements of OMA. Specifically, [REDACTED] asserted that the City Council failed to post an agenda at least 48 hours in advance of the special meeting, and alleged that several members of the City Council met prior to the special meeting to discuss the need to hire outside legal representation to represent the City Council at the special meeting. In response to a request from this office, the public body submitted a detailed answer to the allegations in the Request for Review. [REDACTED] did not reply.

[REDACTED]
The Honorable Kathy Carroll-Duda
November 13, 2018
Page 2

The Public Access Bureau has reviewed the materials submitted by [REDACTED] and the City Council. The City Council's response acknowledged that the City Council failed to provide proper advance notice of April 22, 2014, special meeting, indicating that the agenda "was only publicly posted for less than one hour."¹ Therefore, this office concludes that the City Council violated OMA by failing to provide the public with at least 48 hours advance notice of its April 22, 2014, special meeting.

Additionally, the City Council's response confirmed that three City Council members met outside of an open meeting to discuss the hiring of outside counsel. The City Council is comprised of eight City Council members and the mayor. Therefore, a quorum is comprised of five members, and a majority of the quorum is four members. Although [REDACTED] contends that at least five council members appear to have taken part in the private meeting, the City Council has stated that there is no indication that more than three council members were involved. In light of these conflicting versions, there is insufficient evidence from which this office could conclude that the gathering of some council members prior to the City Council's April 22, 2014, special meeting constituted a meeting of the City Council subject to the requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

29411 o 202a notice improper 2a meeting proper mun

¹Letter from Nadine Palmgren, [then-]Mayor, City of Geneseo to Shari L. West, Assistant Attorney General (June 9, 2014).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 15, 2018

Via electronic mail



RE: OMA Request for Review – 2012 PAC 18555

Dear [REDACTED]

The Public Access Bureau received your Request for Review alleging that Geneva Community Unit School District No. 304 violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) on February 6, 2012. In a November 2, 2018, telephone conversation with a staff member in the Public Access Bureau, you expressed that you wish to withdraw this Request for Review because you moved out of the area. Accordingly, this file is closed. If you have any questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,



JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau

18555 o withdrawn sd

cc: *Via electronic mail*
Mr. Stuart L. Whitt
Whitt Law LLC
70 South Constitution Drive
Aurora, Illinois 60506-7335
swhitt@whittlaw.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 15, 2018

Via electronic mail
Ms. Natasha Dunn



Via electronic mail
Mr. Jonathan Williams
Chairperson
Local School Council of
Dr. Martin Luther King Jr. College Preparatory High School
4445 South Drexel Boulevard
Chicago, Illinois 60653
joncwilliams@gmail.com

RE: OMA Requests for Review – 2018 PAC 53511; 2018 PAC 53945

Dear Ms. Dunn and Mr. Williams:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau is unable to conclude from the available information that the Dr. Martin Luther King Jr. College Preparatory High School (School) Local School Council (Council) violated OMA in connection with meetings that it held in April and May 2018.

BACKGROUND

On June 8, 2018, Ms. Natasha Dunn submitted a Request for Review (2018 PAC 53511) to the Public Access Bureau alleging that between September 2017 and May 2018 the Council did not follow the protocol required by OMA in connection with its process to choose a principal for the School. Specifically, Ms. Dunn alleged that the Council violated OMA during its (1) December 14, 2017, meeting, by improperly going into closed session to discuss the principal selection process; (2) January 4, 2018, special meeting by adding items to its agenda

Ms. Natasha Dunn
Mr. Jonathan Williams
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Page 2

and by meeting in secret to approve advertisement and scheduling dates pertaining to the principal selection process; (3) April 27, 2018, special meeting by voting to narrow the field to three candidates during closed session; (4) April 30, 2018, special meeting by not informing the public of the names of the narrowed field of principal candidates voted on in its prior closed session; and (5) May 7, 2018, special meeting by taking action regarding the selection of a principal in closed session, not informing the public of that action, and not allowing members of the public to address the Council.¹

On June 27, 2018, this office forwarded a copy of Ms. Dunn's Request for Review to the Council and asked it to provide a detailed written response to the allegations regarding the May 7, 2018, meeting. On July 2, 2018, Mr. Kwesi Kuntu Sr., Chairperson of the Council, responded on behalf of the Council, and included links to audio recordings. The Public Access Bureau was only able to open one of the links, which was a recording of the open session of its May 7, 2018, meeting prior to entering closed session.² On July 13, 2018, this office forwarded a copy of the Council's response to Ms. Dunn; on July 17, 2018, Ms. Dunn replied.

On July 9, 2018, Ms. Dunn submitted an additional Request for Review (2018 PAC 53945) to the Public Access Bureau alleging that the Council violated OMA in connection with its May 12, 2018, special meeting by (1) voting to extend a contract to Ms. Melanie Sevier as the new principal of the School; (2) holding the meeting in an outdoor location which was not open and convenient to the public; (3) posting on the School door an agenda for its May 12, 2018, meeting which contained the wrong date of the meeting; and (4) failing to discuss each item on its agenda. As part of her Request for Review, Ms. Dunn attached a copy of the agenda and minutes of the Council's May 12, 2018, special meeting. On July 27, 2018, this office forwarded a copy of Ms. Dunn's Request for Review to the Council and asked it to provide a detailed written response to the allegations raised by her Request for Review. On August 7, 2018, Mr. Jonathan Williams, the new Chairperson of the Council, responded on behalf of the Council. On August 24, 2018, this office forwarded a copy of the Council's response to Ms. Dunn; she did not reply. This office has consolidated these files for purposes of this determination because they involve the same parties and interrelated issues.

¹As part of her Request for Review, Ms. Dunn attached copies of the Council's agendas for the following meetings: December 13, 2017, January 4, 2018, March 5, 2018, April 11, 2018, April 27, 2018, May 7, 2018; and copies of the Council's minutes for the following meetings: December 13, 2017, January 4, 2018, March 4, 2018, April 11, 2018, April 27, 2018, April 30, 2018, and May 7, 2018.

²Mr. Kuntu informed this office that he would place the remainder of the recordings on a disc and send them to this office. To date, this office has not received a copy of those recordings.

Ms. Natasha Dunn
Mr. Jonathan Williams
November 15, 2018
Page 3

DETERMINATION

As an initial matter, we note that section 3.5(b) of OMA (5 ILCS 120/3.5(b) (West 2016)) directs this office to "forward a copy of the request for review to the public body," and section 3.5(c) (5 ILCS 120/3.5(c) (West 2016)) permits the public body to "answer the allegations in the request for Review." During the principal candidate selection process Mr. Kuntu was Chairperson of the Council. On June 27, 2018, this office forwarded a copy of Ms. Dunn's Request for Review, 2018 PAC 53511, to the Council and asked it to provide a detailed written response to certain allegations. On July 2, 2018, Mr. Kuntu provided a response; however, his term as Chairperson expired on June 30, 2018. On July 1, 2018, Mr. Jonathan Williams became Chairperson of the Council and Ms. Dunn became a member of the Council. Mr. Williams helped Ms. Dunn draft her Request for Review 2018 PAC 53945, which was submitted to this office on July 9, 2018. Because the membership of the Council has changed and the former members cannot be compelled to respond to the allegations, this office's ability to obtain pertinent information about the allegations is limited.

This office also notes that the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). Accordingly, to the extent that Ms. Dunn's Requests for Review alleged that the Board violated other laws, those allegations are not subject to review by this office.

2018 PAC 53511

Timeliness

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General *not later 60 days after the alleged OMA violation*. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

The Request for Review (2018 PAC 54511) that Ms. Dunn submitted to this office on June 8, 2018, alleges that the Council violated OMA during its December 14, 2017, and January 4, 2018, meetings. Ms. Dunn submitted her Request for Review more than 60 days after the date of those alleged violations, and has not asserted or provided any facts indicating that she did not discover the alleged violation before the 60-day period expired despite utilizing reasonable diligence. Because Ms. Dunn submitted her Request for Review after the statutory period for doing so elapsed, section 3.5(a) of OMA precludes this office from reviewing the allegations regarding the December 14, 2017, and January 4, 2018, meetings.

Final Action

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.)) provides, in pertinent part, that "[n]o *final action* may be taken at a closed meeting." (Emphasis added.) While a public body may take a preliminary vote in a closed session, a public body must take all final actions in an open meeting. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶¶ 73-74, 77 N.E.3d 625, 637 (2017).

OMA does not define "final action," and no Illinois court has precisely defined that term. However, in *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (5th Dist. 1989), the Illinois Appellate Court examined whether a board's decision in closed session to authorize a request for mediation as an alternative to the negotiations it had been conducting with the secretaries' union was a final action, and concluded that it was not; instead, the board's authorization of mediation was merely a step towards reaching final action on the union's contract. Accordingly, "final action" generally must bring a matter to a resolution. *Compare Davis v. Board of Education of Farmer City – Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978) (adoption of resolution in closed session stating tentative intent to terminate superintendent's employment "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action[,] where board subsequently took final action to terminate the superintendent's employment in open session); *with Kosoglad v. Porcelli*, 132 Ill. App. 3d 1081, 1092 (1st Dist. 1985) (vote to remove commissioner from police board in open session was final action);³ *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 ("a component of a public body's process of reaching final action generally does not, itself, constitute final action.").

³For an analogous articulation of "final action" outside of the OMA context, *see U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1813 (2016) (final agency action "[f]irst * * * must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997))).

Here, Ms. Dunn alleged that during the closed session portion of its April 27, 2018, meeting the Council voted to narrow the field of principal candidates to three specific candidates. That vote did not, however, resolve the matter. Instead, it was merely a step towards taking final action to select a principal. Because narrowing the field to three candidates was not a final action, the Council did not violate section 2(e) of OMA.⁴

In addition, Ms. Dunn alleged that the Council violated OMA during the May 7, 2018, meeting by taking action regarding the selection of a principal in closed session. The Council Chairperson at the time of the meeting, Mr. Kuntu, stated that no action was taken on May 7, 2018, regarding the selection of the principal because the closed session and subsequent attempt to reconvene in open session was disrupted by members of the public. Ms. Dunn stated that the closed session took place for over an hour and alleged that during that time the Council voted to extend a contract.

"Under the plain language of section 2(e) of the Open Meetings Act, the public vote is not merely a ratification of a final action taken earlier in a closed session; it is the final action. Without the public vote, no final action has occurred." *School District No. 186*, 2017 IL 120343 at ¶74, 77 N.E.3d at 637. Even assuming the Council reached a consensus on the principal candidate during the May 7, 2018, closed session, the parties agree that the Council voted to hire a new principal during a meeting held on May 12, 2018. Accordingly, any vote by the Council regarding principal selection, during its May 7, 2018, closed session, did not resolve the matter—final action on hiring a principal took place at a subsequent meeting. Because this final action occurred on May 12, 2018, this office cannot conclude that the Council violated section 2(e) of OMA during its May 7, 2018, meeting.⁵

⁴Ms. Dunn's Request for Review also alleged that the Council improperly met in secret regarding particular matters pertaining to the principal selection process, including the posting of advertisements for principal candidates, the scheduling of principal interviews, the scheduling of the candidate forum, and as evidence provides a copy of the Council's April 11, 2018, meeting minutes, which does not list these items. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the facts supporting the allegation." Ms. Dunn did not provide a summary of facts which support the allegation of a secret meeting, especially where the March 4, 2018, special meeting minutes she provided to this office show that the Council voted regarding principal advertisement, and the minutes of the April 27, 2018, special meeting she provided evince a discussion regarding the scheduling of candidate interviews for April 21, 2018, the candidate forum for May 2, 2018, and the final decision for May 7, 2018. Therefore, this office determined that no further action was warranted regarding that allegation.

⁵Ms. Dunn also alleged that the Board violated OMA by not informing the public the names of the candidates after its April 27, 2018, and May 7, 2018, meetings. Although the intent of OMA "is to assure that agency actions be taken openly and that their deliberations be conducted openly[.]" *Gosnell* 179 Ill. App. 3d at 171, section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.)) allows a public body to discuss the appointment and

Public Comment

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4.

Ms. Dunn alleged that during its May 7, 2018, special meeting, the Council did not allow members of the public to address its members. The agenda listed the public comment portion as the last item on the agenda before adjournment. The Council Chairperson at the time of the meeting, Mr. Kuntu, stated that the agenda listed public comment at the end of the May 7, 2018, meeting, but before that time both the closed session of the meeting and subsequent open session were disrupted by members of the public and chaos ensued. Consequently, Mr. Kuntu stated, he adjourned the meeting for safety reasons. Mr. Kuntu also stated that due to the chaos, some of its members left the meeting and, therefore, he adjourned the meeting because a quorum was no longer physically present. In her reply, Ms. Dunn disputed this account, stating that only one member left the meeting early, that Mr. Kuntu cut off a member of the public from speaking, and that he unilaterally adjourned the meeting. The recording of the open session portion of the May 7, 2018, special meeting shows that as soon as the Council passed a motion to go into closed session, a group of people began shouting after apparently being prompted by a member of the public.⁶ The tape cut off at that point and this office has no further recordings.

While it is undisputed that the Council adjourned the meeting prior to the public comment portion of the meeting, Mr. Kuntu asserts that it was necessary to ensure safety because of a public disruption. Where a public body has reasonable grounds to believe that continuing a meeting could have posed a risk to public safety, it does not violate OMA by adjourning the meeting prior to public comment. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 49736, issued February 6, 2018, at 11. In light of the parties' conflicting versions, and because the only recording of the meeting evinces that commotion ensued as soon as the Council moved to go into closed session,

employment of specific individuals in a closed meeting. OMA does not require the public body to disclose those deliberations.

⁶Local School Council of Dr. Martin Luther King Jr. College Preparatory High School, Meeting, May 7, 2018, Audio Recording.

there is insufficient evidence for this office to conclude that the Council's decision to adjourn the meeting prior to public comment violated section 2.06(g) of OMA.⁷

2018 PAC 53945

The Agenda

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[p]ublic notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special * * * meeting[.]" In her Request for Review, Ms. Dunn alleged that the agenda for the May 12, 2018, special meeting did not provide notice for the meeting because the posted agenda provided May 10, 2018, as the date of the meeting. Mr. Williams, the current Chairperson of the Council, informed this office that the agenda was posted on May 10, 2018, with the proper time and notice posted. The copy of the agenda provided by Ms. Dunn and the copy provided by Mr. Williams list the date for the special meeting as May 12, 2018. Accordingly, the available information indicates that the notice for the May 12, 2018, met the requirements of section 2.02(a) of OMA.⁸

Meeting Accessibility

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) provides, in pertinent part, that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "Open" and "convenient" are not synonymous under OMA. *Gerwin v. Livingston County Board*, 345 Ill. App 3d 352, 359 (4th Dist. 2003). A meeting which is open to the public is a meeting where "no one is prohibited from attending it[.]" *Gerwin*, 345 Ill. App. 3d at 361. A meeting is not convenient if it is "held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. The concept of public convenience implies a "rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" [Citations.] *Gerwin*, 345 Ill. App. 3d at 362.

Ms. Dunn alleged that the May 12, 2018, special meeting was not open and convenient because the agenda did not specify the exact location on the School grounds, which

⁷The Office of the Public Access Counselor is charged with providing advice and education to both the public and public officials. See 15 ILCS 205/7 (West 2016). Therefore, this office notes that the Council did not provide this office with a copy of its rules for public comment. If the Council has not established and recorded rules for public comment, section 2.06(g) of OMA requires that it do so.

⁸Ms. Dunn also alleged that the Council violated OMA by failing to discuss each item on its May 12, 2018, agenda. However, OMA does not require a public body to discuss each item on its agenda.

Ms. Natasha Dunn
Mr. Jonathan Williams
November 15, 2018
Page 8

sits on several acres of land, and because the meeting was held on a Saturday evening during inclement weather. This office has not been provided any facts to suggest that the Council prohibited persons from attending; therefore, the meeting was an open meeting. Our determination regarding the meeting's convenience hinges on whether the May 12, 2018, special meeting was reasonably accessible, taking into consideration the circumstances present at that time. While it seems unusual to hold a meeting outdoors on a Saturday night in the weather conditions described in the Request for Review, this office has not been provided any facts from which we could conclude that people were deterred from attending. Rather, Mr. Williams informed this office that 75 people attended the meeting and that various parent and student groups provided rides to participants. Given the size of the attendance at the meeting and lack of facts corroborating the allegation that the weather discouraged additional members of the public from attending, this office is unable to conclude that the meeting was not reasonably accessible.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5201.

Very truly yours, [REDACTED]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

53511 2e proper 53945 201 proper sd

cc: *Via electronic mail*
Mr. Kwesi Kuntu, Sr.
[REDACTED]



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 15, 2018

Via electronic mail

RE: OMA Requests for Review – 2018 PAC 55393-95

Dear [REDACTED]

The Public Access Bureau has received the above-captioned Requests for Review, in which you allege that Sterling Municipal Band Commission (Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)). After reviewing the information that you have furnished, however, this office concludes that no further action is warranted.

On October 22, 2018, you submitted the following Requests for Review alleging:

- 1) 2018 PAC 55393 – the agenda for the December 11, 2017, Commission meeting was not on a Commission letterhead and did not identify the location of the meeting in the header, or the time and location of the meeting at the bottom; the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 2) 2018 PAC 55394 – the header of the agenda for the Commission's January 19, 2018, meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk;
- 3) 2018 PAC 55395 - the header of the agenda for the January 8, 2018, Commission meeting did not specify the location of the meeting and the chair of the Commission used a school fax machine to send the minutes to the Sterling city clerk.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the

November 15, 2018

Page 2

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, **by a person utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a **summary of the facts supporting the allegation.** (Emphasis added.)

This provision permits a person using reasonable diligence who discovers an alleged violation of OMA after the initial 60-day period has expired to submit a Request for Review within 60 days of the date that the violation was discovered. The allegations in the above-referenced Requests for Review concern meetings that occurred more than 60 days before you filed your Requests for Review. You have not, however, asserted that you discovered the alleged violations outside of the initial 60-day period or provided any information indicating that you did not discover them within 60 days of their occurrence despite using reasonable diligence. Accordingly, this office does not have authority to review the allegations.

Even if you did use reasonable diligence and submitted your Requests for Review before the statutory period expired, you have not provided facts from which this office could conclude that the Commission violated OMA. The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly" and to ensure that individuals are "given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016); *see also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly.")

To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part, that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Similarly, section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)), requires that "[p]ublic notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides, "[a]ny agenda required under this Section **shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action** at the meeting." (Emphasis added.)

[REDACTED]
November 15, 2018

Page 3

The plain language of section 2.02 of OMA, does not require a public body to include on its agenda or notice a specific type of header, the physical address of the location where the meeting will be held, or the time or location of the subsequent meeting. Further, no provision of OMA governs how the Commission's chair transmits meeting minutes to the city clerk. Accordingly, this office will take no further action in these matters.

These files are closed. If you have any questions, you may contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

55393 55394 55395 o no fi war mun

cc: Mr. Gonzalo S. Reyes
Band Commissioner
Sterling Municipal Band
Post Office Box 994
Sterling, Illinois 61081



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 15, 2018

Via electronic mail

Mr. Hugh Bartling
Department of Public Policy Studies
DePaul University
Daley Building
14 East Jackson Boulevard
Chicago, Illinois 60604
hugh@hugh.in

Via electronic mail

The Honorable Stephen H. Hagerty
Mayor
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
shagerty@cityofevanston.org

RE: OMA Request for Review – 2018 PAC 55641

Dear Mr. Bartling and Mayor Hagerty:

The Public Access Bureau has received a Request for Review in which Mr. Hugh Bartling alleges that the Evanston City Council (City Council) violated section 2.06(b) of the Open Meetings Act (OMA) (5 ILCS 120/2016(b) (West 2016)) by failing to post approved meeting minutes on its website. Specifically, Mr. Bartling alleged that at the time he submitted his Request for Review, minutes of the City Council's July 23, 2018, August 13, 2018, September 17, 2018, October 8, 2018, and October 15, 2018, had not been posted.

This office has reviewed the City's website¹ and confirmed that minutes of all the

¹City of Evanston, City Council Agendas and Minutes,
<https://www.cityofevanston.org/government/agendas-minutes/city-council-agendas-and-minutes> (last visited November 14, 2018).

Mr. Hugh Bartling
The Honorable Stephen Hagerty
November 15, 2018
Page 2

above-referenced City Council meetings have been posted.² Accordingly, we will take no further action with respect to this matter. Although this office makes no findings as to when the minutes were posted, we note for future reference that the plain language of section 2.06(b) of OMA requires all public bodies with websites maintained by full-time staff to post minutes of regular meetings of their governing bodies within 10 days after approving those minutes and to retain those minutes on their websites for at least 60 days after posting.

This file is closed. If you have any questions, please contact me at (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

55641 o no fi war mun

²The minutes of the July 23, 2018, are labelled on the website as "Council Actions."



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 15, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55684

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action in this matter is warranted at this time.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation." (Emphasis added.) Your correspondence received by this office on November 13, 2018, alleged that the Chicago City Council failed to post a proper meeting agenda at least 48 hours in advance of its regular meeting scheduled for November 14, 2018.

This allegation is premature, however, because the allegation concerned a regular meeting that had not yet taken place. Please keep in mind that a public body may discuss items that are not on a meeting agenda, although no final action may be taken on a matter that does not appear on a properly posted agenda. Accordingly, this office will take no further action with respect to this matter. If you believe that a violation occurred at the November 14, 2018, City Council meeting, you may file a Request for Review that contains facts supporting that allegation.

[REDACTED]
November 15, 2018
Page 2

If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very yours truly,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

55684 o no fi war mun

cc: The Honorable Anna M. Valenica
City Clerk
City of Chicago
121 North LaSalle Street, Room 107
Chicago, Illinois 60602



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 16, 2018

[REDACTED]
P.O. Box 56
Gardner, Illinois 60424

RE: OMA Requests for Review – 2012 PAC 19438; 2012 PAC 19709
FOIA Request for Review – 2014 PAC 28065

Dear [REDACTED] and [REDACTED]

The Public Access Counselor received your Requests for Review submitted pursuant to sections 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2012)) and section 9.5(a) of the Freedom of Information Act (OMA) (5 ILCS 140/9.5(a) (West 2014)) alleging violations by the Gardner Fire Protection District. On November 15, 2018, you advised this office by telephone that this office could close these Requests for Review. Accordingly, these files are closed. Please contact me at (217) 524-7958 if you have questions.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

19483 o wdrawn fd
19709 o wdrawn fd
28065 f wdrawn fd

cc: FOIA Officer
Gardner Fire Protection District
P.O. Box 181
Gardner, Illinois 60424



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 16, 2018

Via electronic mail



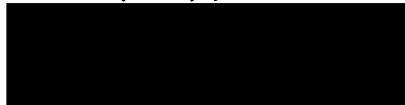
RE: OMA Request for Review – 2014 PAC 29449

Dear



On May 20, 2014, the Public Access Counselor received your Request for Review submitted pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2014)). Your Request for Review alleged that the Itasca School District No. 10 Board of Education violated OMA at its May 14, 2014, meeting. In a telephone call on November 15, 2018, you advised this office that it could close this Request for Review. Accordingly, this file is closed. Please contact me at (217) 524-7958 if you have questions.

Very truly yours,



LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

29449 o wdrawn sd

cc: *Via electronic mail*
Mr. Marty Lundeen, President
Itasca School District No. 10 Board of Education
200 North Maple Street
Itasca, Illinois 60143
schoolboard@itascal10.org

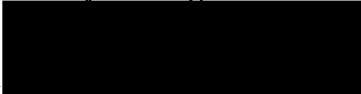


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 16, 2018

Mr. Brian Frederiksen
Valleylake.org



RE: OMA Request for Review – 2014 PAC 30971

Dear Mr. Frederiksen:

The Public Access Bureau received your Request for Review alleging that Wildwood Park District Board violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) on June 30, 2014, and July 21, 2014. In a November 2, 2018, telephone conversation with a staff member in the Public Access Bureau, you expressed that this Request for Review should be closed because the matter has been resolved. Accordingly, this file is closed. If you have any questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,



JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau

30971 o inf r pkd

cc: Mr. Adam Simon, Esq.
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
175 East Hawthorn Parkway, Suite 145
Vernon Hills, Illinois 60061



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 16, 2018

Via electronic mail

Via electronic mail

The Honorable Jim Andruch
President, Board of Education
Taylorville Community Unit School District #3
512 West Spresser Street
Taylorville, Illinois 62568
jandruch@tcusd3.org

RE: OMA Requests for Review – 2018 PAC 53902

Dear [REDACTED] and Mr. Andruch:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Taylorville Community Unit School District #3 violated OMA by failing to provide advance notice of the general subject matter of a final action taken at its May 14, 2018, meeting.

In her Request for Review, [REDACTED] alleged that at the May 14, 2018, meeting, the Board voted to move 3rd grade Stonington students to Memorial School without providing any reference to that subject on the meeting agenda. Consequently, she alleged, parents and citizens who were concerned about the issue did not attend the meeting.

On August 22, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide a copy of the agenda and meeting minutes of the May 14, 2018, meeting together with a written response to [REDACTED] allegation. On September 20, 2018, the Board president furnished a written response and a copy of the agenda. On September 21, 2018, this office forwarded a copy of the Request for Review to [REDACTED] she replied on October 9, 2018.

DETERMINATION

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) generally requires a public body to provide the public with at least 48 hours advance notice of its meetings. Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

The Board's response to this office stated that at the May 14, 2018, meeting, the Superintendent informed the Board under the "Superintendent's Report"¹ agenda item that 3rd grade Stonington students would be transferred to Memorial School. The response stated that "a vote was taken by the board, but was not necessary."² In her reply to that response, [REDACTED] cited a portion of the Board's policy manual which states that the Board's powers and duties include establishing attendance units and assigning students to schools.

Regardless of whether the Board was required to take action to approve transferring 3rd grade Stonington students to Memorial School, it is undisputed that the Board voted on the matter. Neither "Superintendent Report" or any other item on the meeting agenda identified the general subject matter of the Board's final action. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA.

Although it does not appear practical at this time for the Board to remedy its violation by holding another vote on the transfer after providing proper advance notice, the Board should be mindful of its obligation to include the general subject matter of all final actions on its meeting agendas. When presented with a subject that it did not anticipate addressing, the Board should refrain from taking final action until the public has been provided with sufficient advance notice in accordance with the requirements of section 2.02 of OMA.

¹Taylorville Community Unit Schools Board of Education, Regular Meeting, Agenda Item 9 (May 14, 2018).

²Letter from Jim Andruch, Board President, to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (September 20, 2018).

[REDACTED]
The Honorable Jim Andruch
November 16, 2018
Page 3

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This file is closed.

Very truly yours,

[REDACTED]
[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

53902 o 202 notice improper sd



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 19, 2018

Via electronic mail

[REDACTED]

RE: OMA Request for Review – 2016 PAC 42916

Dear [REDACTED]

On July 13, 2016, this office received your Request for Review alleging that at its June 28, 2016, meeting, the Village of Cahokia Board (Board) prohibited you from exercising your statutory right to make public comments pursuant to section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)). On July 26, 2016, this office sent a copy of your Request for Review to the Board seeking a response to your allegation, but did not receive an answer. On April 30, 2018, this office e-mailed you asking whether you still sought this office's assistance, but we did not receive a reply. Because there is no indication that you are still interested in this matter, and because the membership of the Board is likely to be different at present, this file is closed. See 5 ILCS 120/3.5(e) (West 2016) (authorizing the Attorney General to exercise his or her discretion to resolve a Request for Review "by a means other than the issuance of a binding opinion."). Please contact me at (217) 782-1699 if you have any questions.

Very truly yours,

[REDACTED]

LEO DRAWS
Assistant Attorney General
Public Access Bureau

42916 o dsc mun

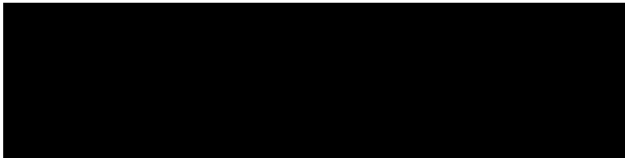


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 19, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55458

Dear [REDACTED]

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (2016)). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted in this matter.

On October 24, 2018, the Public Access Bureau received your Request for Review alleging that the City of Elmhurst (City) Public Works & Buildings Committee (Committee) violated section 2.06(d) OMA (5 ILCS 120/2.06(d) (West 2016)) because it had not reviewed the minutes of the closed session portions of its meetings held in 2014, 2015, and 2018. In particular, you stated that you had previously submitted a Request for Review to this office, which was opened as 2018 PAC 52812, concerning the Committee's failure to conduct a semi-annual review of closed session minutes. You alleged that the Committee has continued to violate section 2.06(d) of OMA since this office issued a determination in that matter on August 28, 2018. You requested that the closed session minutes of meetings in 2014, 2015, and 2018 be released because the Committee had not reviewed those minutes within 60 days of discovering its failure to comply with the requirements of section 2.06(d) of OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day

period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation.

The public policy underlying OMA is "that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2016). In keeping with this policy, public bodies must periodically review their closed session minutes, which are generally confidential and exempt from disclosure under section 7(1)(1) of the Freedom of Information Act (FOIA),¹ to determine whether the need for confidentiality still exists. Section 2.06(d) of OMA provides: "[e]ach public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings" to determine whether "(1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection."

In 2018 PAC 52812, you submitted a Request for Review to this office on April 22, 2018, in which you alleged that the Committee had not held a semi-annual review of the minutes of its closed session meetings in 2014, 2015, 2017, and 2018. This office concluded that although the Committee held a meeting on May 14, 2018, where the Committee reviewed the minutes of its closed session meetings from 2017, the Committee had not adhered to its obligation to review closed session minutes under section 2.06(d) of OMA. However, this office specifically concluded that the Committee was not required to remedy the violation by disclosing all of the unreviewed closed session minutes. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52812, issued August 28, 2018, at 3-4.

Your Request for Review to this office in this matter alleges the same facts as your Request for Review in 2018 PAC 52812. In 2018 PAC 52812, this office reviewed those facts together with the Committee's written answer and your reply and concluded that the Committee had violated OMA but was not required to remedy that violation by disclosing all of the closed session minutes that had not been reviewed. In this matter, you again request this office conclude that the Committee violated OMA by failing to review all of its closed session minutes and direct the Committee to release the unreviewed closed session minutes. Because this office has previously reviewed the allegations in your Request for Review and concluded that the Committee had violated OMA but that the remedial action you had requested was not

¹5 ILCS 140/7(1)(i) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018)).

[REDACTED]
November 19, 2018

Page 3

required, this office declines to review those allegations again and will take no further action in this matter.

However, this office is also charged with educating public bodies of their responsibilities under OMA. See 15 ILCS 7(c)(1) (West 2016)). Accordingly, this office reminds the Committee of its obligation under section 2.06(d) of OMA to at least semi-annually review the minutes of *all* of its closed session meetings and report in open session whether the need for confidentiality still exists as to the minutes or that the minutes may be released for public inspection.

This matter is closed. If you have any questions, please contact me at mhartman@atg.state.il.us, (217) 782-9054, or the Springfield address on the first page.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

55458 o no fi war mun

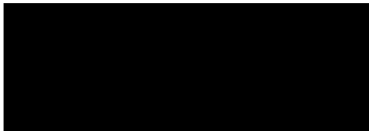
cc: The Honorable Jim Kennedy
Chairperson
Public Works & Buildings Committee
City of Elmhurst
209 North York Street
Elmhurst, Illinois 60126



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 19, 2018



RE: OMA Request for Review – 2018 PAC 55727

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Village of Cherry Valley (Village) Board of Trustees (Board) violated OMA in connection with the construction project at issue in your allegations.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in relevant part:

A person who believes that a violation of *this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of *the facts supporting the allegation*. (Emphasis added.)

Your November 14, 2018, Request for Review stated that on May 24, 2018, a building permit was issued for a parcel of property, but no public meetings were held on that topic. Construction on the structure began in September 2018, you stated, alleging that the Village violated various Village ordinances and provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.* (West 2016)) in the process. The Public Access Counselor's authority to resolve disputes, however, is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Because your allegations concerning Village ordinances and the Illinois Municipal Code do not provide a factual basis for a violation of OMA, they are not subject to review by this office.

[REDACTED]
November 19, 2018

Page 2

OMA concerns the transparency with which public bodies meet and conduct public business; it does not govern substantive zoning or construction specifications. *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) ("The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly."). A public body generally violates OMA by holding a meeting with insufficient openness, not by declining to hold a meeting about a particular subject. Therefore, the allegation that neither the Board nor any other public body of the Village held a meeting about the construction project does not indicate that the Board or any other Village body violated OMA. Accordingly, this office has determined that no further action is warranted in this matter.

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

55727 o no fi war mun

cc: The Honorable Jim E. Claeysen
President, Board of Trustees
Village of Cherry Valley
806 East State Street
Cherry Valley, Illinois 61016



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 21, 2018

Via electronic mail



Via electronic mail

Ms. Lisa Dawn Mienheimer
Village of New Douglas
Village Clerk
ndclerk@madisontelco.com

RE: OMA Request for Review – 2014 PAC 31894

Dear [REDACTED] and Ms. Mienheimer:

On October 21, 2014, this office received [REDACTED] Request for Review alleging that the Village of New Douglas (Village) Board (Board) did not provide sufficient advanced notice of its October 20, 2014, meeting as required by sections 2.02(a) and 2.02(c) of the Open Meetings Act (OMA) (5 ILCS 120/2.02(a), (c) (West 2014)). In particular, [REDACTED] alleged that the agenda for the meeting was not posted 48 hours before the meeting because the Board did not post the agenda in the post office lobby until after 1 p.m. on October 19, 2014.

Section 2.02(a) of OMA states "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." "The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting." 5 ILCS 120/2.02(c) (West 2014). Section 2.02(c) of OMA further provides that "[i]f a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting."

[REDACTED]
Ms. Lisa Dawn Mienheimer
November 21, 2018
Page 2

On December 2, 2014, this office forwarded a copy of the Request for Review to the Board and asked it to respond to [REDACTED] allegations. On December 3, 2014, the Board responded by stating that a copy of the agenda was placed on the door of the community center where the meeting was to be held on October 13, 2014. The Board stated that it also posted a copy of the agenda at the post office on October 17, 2014, but that someone had removed the agenda when the Village clerk visited the post office again on October 20, 2014. In his reply, [REDACTED] alleged that the Board failed to continuously post the agenda for the meeting because it did not secure the agenda in place at the post office. Because section 2.02(a) of OMA only requires that the Board post the agenda at its principal office and the location of the meeting and because the post office is not the Village's principal office or the location of the meeting, the Board was not required to post the agenda for the meeting at the post office. Further, this office has previously determined that a public body does not violate OMA when a properly posted agenda is removed from that location due to actions outside of the public body's control. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 49761, issued November 9, 2017, at 4.* Because the available information indicates that a copy of the agenda for the October 20, 2014, meeting was posted at the location of the meeting and was continuously available at that location for 48 hours before the meeting, this office concludes that the Board did not violate sections 2.02(a) and 2.02(c) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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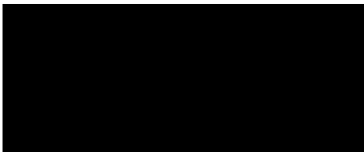


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 21, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55683

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted in this matter.

On November 13, 2018, this office received your Request for Review alleging that the Village of Worth (Village) Board of Trustees (Board) may have violated OMA in connection with final action at its November 7, 2018, meeting. In particular, your Request for Review stated that the Board's agenda for the November 7, 2018, meeting included an ordinance to approve the modification of the Village's parking code, which you assert the Board voted to approve without first discussing in an open meeting. You indicate that when you asked the Village's attorney whether members of the Board had met in private to discuss the matter, the attorney told you that they had not met as a group, but instead the president of the Village had individually briefed the members of the Board on the issue.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.)

OMA is intended to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)), as amended by Public Act 100-646, effective July 31,

November 21, 2018

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2018)) provides that "all meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 (5 ILCS 120/1.02 (West 2016)) defines a "public meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of **contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business** or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. (Emphasis added.)

Under this statutory definition, a "meeting" requires a majority of a quorum of the members of the Board to engage in contemporaneous, interactive communication concerning public business to constitute a meeting of the Board subject to the procedural safeguards and requirements of OMA. The Board is comprised of six members and the president. Accordingly, four Board members comprise a quorum, and a majority of the quorum is three members. The information provided in your Request for Review does not allege or indicate that at least three members of the Board met in private to discuss the modification of the parking code. Therefore, the individual discussions with the president did not constitute a meeting subject to the requirements of OMA.

Moreover, there is no indication that the Board failed to take action openly in connection with the modification of the parking code. The available information indicates that the Board took final action on that issue in open session at the November 7, 2018, meeting. Although you appear to indicate that the Board did not deliberate on the modification, you do not allege that the Board failed to publicly recite the "nature of the matter being considered" to inform the public of the business being conducted as required by section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). In *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶64, 77 N.E.3d 625, 636 (2017), the Illinois Supreme Court ruled that section 2(e) only requires a public body to "identify the particular transaction or issue[;]" it does require a public body to provide an explanation of the final action's "terms or its significance." This office does, however, caution the members of the Board to be mindful of the public policy favoring the open discussion of matters affecting the public interest, before engaging in individual private discussions in the future. See 5 ILCS 120/1 (West 2016).

[REDACTED]
November 21, 2018

Page 3

Accordingly, this office has determined that no further action is warranted on this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

55683 o no fi war mun

cc: *Via electronic mail*
Ms. Mary Werner
President
Village of Worth
7112 West 111th Street
Worth, Illinois 60482
mwerner@villageofworth.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 27, 2018

Ms. Leslie Edgar
United Lost Lake Property Owners Association
903 Missouri Drive
Dixon, Illinois 61021

Re: OMA Requests for Review – 2016 PAC 40408, 2016 PAC 42258
2016 PAC 42259

Dear Ms. Edgar:

You filed the above-captioned Requests for Review with this office alleging that the Lost Nation New Landing River Conservancy District violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2012)). On November 15, 2018, you advised this office that you no longer wished to pursue the above-captioned Requests for Review. Accordingly, this letter shall close these matters.

If you have any questions, please contact the Public Access Bureau at 877-299-3642.

Very truly yours,

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

40408 42258 42259 f i n f r m u n

Ms. Leslie Edgar
November 27, 2018
Page 2

Cc: Lost Nation New Landing River
Conservancy District of Illinois
100 Park Drive
Dixon, Illinois 61021



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 28, 2018

Via electronic mail



Re: FOIA Request for Review – 2014 PAC 30210

Dear [REDACTED]

You submitted the above-captioned Request for Review alleging that Public Works Committee of the Stephenson County Board violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)). On November 28, 2018, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you advised this office that you no longer wished to pursue the above-captioned Request for Review. Accordingly, this letter shall close this matter. If you have any questions, please contact me at 312-814-5201.

Very truly yours,



EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

30210 f in f r co

cc: *Via electronic mail*
Mr. William Hadley
Chairman
Stephenson County Board
whadley@co.stephenson.il.us



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 29, 2018

The Honorable Terry Wilke
Supervisor
Avon Township
433 East Washington Street
Round Lake Park, Illinois 60073

RE: OMA Request for Review – 2018 PAC 54569

Dear Mr. Wilke:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted in this matter.

On September 7, 2018, this office received a signed copy of your complaints concerning the Avon Township (Township) Board of Trustees (Board) as necessary to file a Request for Review. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.) Your letter stated: "[t]he Office of Supervisor of Avon Township requests a review of Common Law Ethics violations, OMA violations and FOIA [Freedom of Information Act (5 ILCS 140/1 *et seq* (West 2016))] violations in and around the time of 2018-19 budget processes."¹ You also sent a more detailed letter addressed to Attorney General Lisa Madigan. Specifically, you state that at the Board's July 2018, regular meeting, "the board took it upon itself to have discussions about the budget that were not listed in the agenda and then additionally to do so in executive session."² You also

¹Letter from Terry Wilke, Avon Township Supervisor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (dated July 25, 2018, first received August 23, 2018).

²Letter from Terry Wilke, Avon Township Supervisor, to the Honorable Lisa Madigan, Illinois Attorney General (July 25, 2018).

The Honorable Terry Wilke
November 29, 2018
Page 2

allege that "[s]everal board members have mentioned and/or admitted that they were/are using a round robin style of communicating with each other."³

OMA is intended to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Your Request for Review does not allege that the Board took **final action**, or made any decisions, on a matter not listed on the posted agenda. Instead, you allege that the Board merely **discussed** issues concerning the Township's 2018-2019 budget. The plain language of section 2.02(a) (5 ILCS 120/2.02(a) (West 2016)) of OMA⁴ permits discussions during regular meetings of items not specifically set forth on the agenda. Additionally, you have not provided any facts supporting your allegation that the Board held an improper closed session discussion at that meeting nor have you alleged that the Board violated the procedural safeguards provided by OMA for a closed session. Further, although you suggest that some Board members are communicating with one another between meetings to skirt the requirements of OMA, you do not provide any facts to support that allegation.

Please also note that the Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) and OMA. 15 ILCS 205/7(c) (West 2016). To the extent that your Request for Review alleges violations of municipal ordinances, laws, or ethics codes, rather than FOIA or OMA violations, the Public Access Counselor does not have authority to review those alleged violations.


³Letter from Terry Wilke, Avon Township Supervisor, to the Honorable Lisa Madigan, Illinois Attorney General (July 25, 2018).

⁴Section 2.02(a) of OMA provides: "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. * * * **The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda.**" (Emphasis added.). Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) further provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance **that will be the subject of final action at the meeting.**" (Emphasis added.)

The Honorable Terry Wilke
November 29, 2018
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Because your Request for Review did not provide facts sufficient to support your allegations that the Board violated OMA, this office has determined that no further action is warranted. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

54569 o no fi war mun

cc: *Via electronic mail*
Mr. David Weinstein
Township Attorney
Avon Township
433 East Washington Street
Round Lake Park, Illinois 60073
david@dweinsteinlaw.com

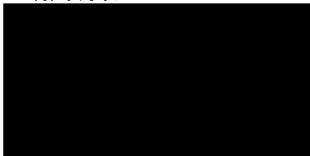


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 29, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55828

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted in this matter.

On November 26, 2018, you submitted a Request for Review to this office alleging that the Village of Onarga (Village) Board of Trustees (Board) violated OMA by posting its agendas on a bulletin board in the Village's library that was not easily visible to the public.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.) Here, although you allege that the Board, generally, has been posting agendas in a location that members of the public may not be able to view, you do not provide any facts concerning a specific alleged violation. In short, you have not identified any specific meeting that occurred within the past 60 days for which the agenda for a Board meeting was unavailable for public viewing. Additionally, you suggest that the Board's agendas may not be posted at least 48 hours before meetings. However, you do not provide any facts to support that allegation.

Accordingly, because your Request for Review does not include facts to support your allegation that a violation of OMA occurred, this office has determined that no further action is warranted in this matter.

[REDACTED]
November 29, 2018

Page 2

The mission of the Public Access Bureau, however, is "to provide advice and education with respect to the interpretation and implementation" of OMA. 15 ILCS 205/7(a) (West 2016). With respect to the notice and agenda requirements of OMA, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires a public body to post notice and an agenda for its meetings "at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) further requires "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body." In addition, a public body must "ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting." 5 ILCS 120/2.02(c) (West 2016). This office recommends that the Board review its procedures to ensure that it is complying with these posting requirements, as well as other provisions of OMA. We also remind the Board that all elected or appointed public body members must complete the Public Access Counselor's electronic training curriculum, found at <http://foia.ilattorneygeneral.net/>, and file a copy of the certificate of completion with the public body.

This file is closed. Should you have any questions, please contact me at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thanks.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

55828 o no fi war mun

cc: *Via electronic mail*
The Honorable Shane Cultra
President
Village of Onarga
113 West Seminary Avenue
Onarga, Illinois 60955
villageofonarga@sbcglobal.net



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 30, 2018

Via electronic mail



Via electronic mail

The Honorable Patrick Horcher
President, Board of Trustees
Village of Wheeling
2 Community Boulevard
Wheeling, Illinois 60090
phorcher@wheelingil.gov

Via electronic mail

Ms. Mallory A. Milluzzi
Attorney for the Village of Wheeling
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
mamilluzzi@ktjlaw.com

RE: OMA Request for Review – 2017 PAC 49551

Dear [REDACTED] President Horcher, and Ms. Milluzzi:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). As explained below, the Public Access Bureau recommends that the Board of Trustees (Board) of the Village of Wheeling (Village) review portions of its rules and procedures concerning public comment at meetings.

BACKGROUND

On September 7, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA during its September 5, 2017, meeting by enforcing restrictions on public comment that are not written in the municipal code. Specifically, [REDACTED] alleged that she attempted to comment about two specific trustees and

[REDACTED]
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
November 30, 2018
Page 2

her claim that they were improperly operating home-based businesses but was interrupted by the Village President, Mr. Patrick Horcher, who informed her that comments should be addressed to the Board as a whole and that she could not engage in personal attacks against individual members. She contended that the purpose of her comments was to hold the trustees accountable in their enforcement of the Village's residential zoning ordinance and dealings with home-based businesses. [REDACTED] also asserted that she was unaware of any Village rules that required her to address comments to the Board as a whole or that prohibited personal attacks.

On September 18, 2017, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the Board's established and recorded rules governing public comment, together with a written response to [REDACTED] OMA allegations. This office also asked the Board for a copy of the meeting agenda, open session minutes, and any verbatim recordings of the meeting. On September 27, 2017, this office received a written response with links to copies of the meeting agenda, the Village Code, and video recordings of past Board meetings, including the meeting at issue. This office also received a copy of the draft meeting minutes for this office's confidential review. On October 3, 2017, this office forwarded a copy of the Board's response to [REDACTED] she replied that same day, requesting from the Village a copy of "Robert's Rules of Order" as referenced in the Board's response.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4 ("The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules."). Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, a public body generally may promulgate reasonable "time, place and manner"

[REDACTED]
The Honorable Patrick Horcher

Ms. Mallory A. Milluzzi

November 30, 2018

Page 3

rules aimed at preserving order and decorum and ensuring that meetings can be conducted efficiently. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 5.

Notwithstanding the legitimate interest in establishing rules governing order and decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based must be narrowly drawn to serve compelling state interests. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). As the Ninth Circuit has explained:

An ordinance that governs the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting:

However, actually disturbing or impeding a meeting means actual disruption of the meeting; a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance. (Internal citations and ellipses omitted.) (Emphasis in original.) *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).

In *Acosta*, the court struck down as overbroad a city ordinance that provided for the removal of "any person who commits disorderly, insolent, or disruptive behavior, including * * * personal, impertinent, profane, insolent, or slanderous remarks." *Acosta*, 718 F.3d at 811. The court held that the ordinance was unconstitutional because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. *Acosta*, 718 F.3d at 813.

In its response to this office, the Board asserted that it had restricted [REDACTED] comments in accordance with sections 2.03.060(a), 2.03.180(d), and 2.03.210 of the Municipal Code of Wheeling (Code).¹ Section 2.03.060(a) of the Code provides:

- (a) Citizen Concerns and Comments at Village Board Meetings. ***Members of the general public may address the board with concerns or comments regarding issues relevant to village business. Issues relevant to village business are defined to mean information about village events; issues that the public body has the authority to address; items listed***

¹Wheeling, Ill. Municipal Code, ch. 2.03 §§ 060(a), 180(d), 210A (2018), available at https://library.municode.com/il/wheeling/codes/code_of_ordinances?nodeId=WHMUCO.

on the agenda; and items or issues previously voted on by the village board or that the village board has the authority to consider or vote on in the future. The village president or his designee shall strictly restrain comments to matters that are relevant to village business and *shall not permit repetitious comments or arguments.* Members of the general public who wish to address the board must sign the request to speak form prior to the commencement of the public meeting. The persons submitting a petition, concern or other comment shall be allotted five minutes to present their points. The manager or corporate authorities may respond for the village. (Emphasis added.)

Section 2.03.180(d) of the Code further provides:

- (d) The president shall maintain order and decorum at all times during official meetings of the corporate authorities. The president shall call to order any trustee who transgresses these rules, and shall admonish all other persons who do not abide by these rules or the village ordinances. The president shall eject from the meeting any person other than a village officer who interferes with the orderly conduct of the meeting or who persists in disorderly, disruptive conduct and may call on any officer of the police department for assistance.

In addition, section 2.03.210 of the Code provides that "[t]he rules of order of the corporate authorities of the village of Wheeling shall consist of the provisions of this chapter and, except where inconsistent or in conflict with this chapter or with Illinois law, the provisions of the new revised Robert's Rules of Order to the extent otherwise applicable." In connection with this provision, the Village cited to Robert's Rule of Order No. 7, highlighting, in pertinent part:

Speakers must address their remarks to the presiding officer, be courteous in their language and deportment, and avoid all personalities, never alluding to the officers or other members by name, where possible to avoid it, nor to the motives of members.
* * * Debate must address issues not personalities and that no one

[REDACTED]
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
November 30, 2018
Page 5

is permitted to make personal attacks or question the motives of other speakers.

In its response to this office, the Board asserted that "the Village's rules and regulations are content and viewpoint neutral and serve the significant government interest of maintaining civility and decorum. Speakers are only subject to restriction when their speech disrupts, disturbs, or otherwise impedes the orderly conduct of the Village Board meeting."² The Board contended that the "[r]estrictions imposed on [REDACTED] and other speakers derive from a perfectly sustainable and content-neutral desire to prevent badgering, constant interruptions, and disregard for the rules of decorum."³ (Emphasis omitted.)

This office has reviewed the video recording of the public comment portion of the Board's September 5, 2017, meeting.⁴ [REDACTED] walked up to the podium and began by asking Trustee Mary Krueger, for her support in dropping actions against certain businesses. The Village Manager, Jon Sfondilis, began to respond to [REDACTED] when she stopped him and stated that she was talking to Trustee Krueger. President Horcher then stepped in and informed [REDACTED] that her comments needed be addressed to the Board as a whole on matters of Village business. [REDACTED] asked again the same question to Trustee Krueger. President Horcher asked [REDACTED] if she understood what he had said. [REDACTED] did not respond and proceeded to speak about a certain alleged business and its connection to Trustee Krueger. President Horcher asked her once more if she understood what he had explained. [REDACTED] did not respond and continued speaking about the alleged business. President Horcher again informed [REDACTED] that her comments had to pertain to the Village business at hand. [REDACTED] responded that her comments pertained to Village business and continued to speak about the alleged business and the Village's enforcement of its zoning ordinance. She then referenced Trustee Krueger and Trustee Ray Lang, at which point President Horcher attempted to intervene. After a few attempts at speaking to her, President Horcher informed [REDACTED] that personal attacks were not needed and to follow the rules. [REDACTED] disputed the characterization of her comments as personal attacks and made a comment about him "switching sides." President Horcher responded: "I need you to stick to the rules, or to sit down." [REDACTED] resumed commenting about the home business

²Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

³Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

⁴Village of Wheeling, Board Meeting Video 9-5-2017 (September 5, 2017), <http://www.wheelingil.gov/657/Board-Meeting-Video-9-5-2017> (last visited March 21, 2018), 15:57.

[REDACTED]
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
November 30, 2018
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ordinance until she made another allegation against Trustee Lang, and President Horcher again attempted to interject. [REDACTED] continued speaking until a Board member appeared to call out to President Horcher. President Horcher stopped [REDACTED] and told her she was done and that her time was up. [REDACTED] resumed speaking against President Horcher's protestations; he asked for an officer to escort her out, and the five-minute bell rang as the officer walked up to her. [REDACTED] finished her comments and exited.

In explaining the restrictions it imposed on [REDACTED] comments during its September 5, 2017, meeting, the Board contended that [REDACTED] attempted to debate or argue with a specific trustee rather than address the Board as a whole. The Board asserted that [REDACTED] started off her public comment with demanding an answer from a specific Trustee."⁵ The Board contended that "[t]his initial exchange was disruptive and a violation of the Village Code, as she demanded an answer from a Trustee, interrupted and argued with the Village Manager and ignored the direction of the Village President to badger a Trustee."⁶ The Board further stated that [REDACTED] had been permitted to speak about the issue of home-based business on other occasions, including at its August 21, 2017, meeting. The Board asserted that it "had already made a decision about home based businesses[.]" and consequently, [REDACTED] comments were "repetitive and argumentative."⁷ Additionally, the Board contended that [REDACTED] was not prohibited from making comments about individual trustees, but that "she cannot make personal, slanderous remarks about individuals that are not relevant to their performance or qualifications as village officials."⁸ The Board also argued that [REDACTED] tone and behavior were disruptive, asserting that she "continually raised her voice and spoke over the Village Manager and the Village President" and made certain comments that were disruptive.⁹

⁵Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

⁶Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

⁷Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

⁸Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

⁹Letter from Mallory Milluzzi, Village Attorney, Klein Thorpe & Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 27, 2017).

[REDACTED]
The Honorable Patrick Horcher
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In this case, the video recording shows that Manager Sfondilis' interruption of [REDACTED] at the beginning of her public comment was in response to a question she repeatedly posed to Trustee Krueger. The Board clarified that Manager Sfondilis was attempting to explain to [REDACTED] that questions would not be answered during the public comments session. This office's review of section 2.03.060(a) of the Code confirmed that the Village Manager may respond on behalf of the Village. As the Board acknowledged, nothing in OMA prevents a member of the public from asking public officials questions. However, OMA does not require a public official to respond to questions or comments that are directed to him or her. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2.* Because OMA does not require public officials to respond to questions, and because the Village's established and recorded rules permit the Village Manager to respond on behalf of the Board, this office concludes that Manager Sfondilis did not improperly interrupt [REDACTED] at the beginning of her comments, and Trustee Krueger was not required to respond to questions.

On the other hand, with respect to the Board's interruptions of [REDACTED] comments when she directed remarks towards or made claims about specific Trustees, the Board did not demonstrate that its restrictions were reasonably necessary to maintain order, decorum, or efficiency. Encompassed within the right to comment is the right of members of the public to address specific public officials, albeit OMA does not require that those public officials to respond to the comments. In this case, the Board was not required to respond to [REDACTED] comments or debate with her in response to her allegations. However, this office is unable to conclude from its review of the recording that [REDACTED] comments were clearly creating a disturbance. Although [REDACTED] spoke in a raised voice at times, she did not make threats, use profanity, or otherwise engage in conduct that disrupted the meeting.

To the extent that criticizing a public official by name could be considered a "personal attack" that disrupted the meeting, this office has previously reviewed a public body's decision to prohibit a speaker from completing his public comments based on a rule that prohibited "'personal attacks against others'" or "rude or slanderous remarks." *Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3.* In that matter, this office emphasized: "[W]hether a remark constitutes a 'personal attack' is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." *Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3.* Because the speaker's attempt to comment at the meeting did not appear to create a disturbance or interfere with the efficiency of the proceedings, this office concluded that the

[REDACTED]
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public body improperly prohibited him from completing his comments. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 4.

Likewise, this office is unable to conclude that [REDACTED] use of the two Trustees' names disrupted, or imminently threatened to disrupt, the meeting at issue. Her comments were critical of two trustees and appeared to allege that actions in their personal lives were inconsistent with their public position on a zoning issue. Although those comments were directed at the Board members personally, they concerned the issue of the Board's enforcement of the Village zoning ordinance. Accordingly, this matter is distinguishable from the Federal District Court case the Board argued is similar. *Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1373 (D. Kan. 1998) (city council did not violate first amendment to the United States Constitution by restricting personal comments about an appointee to a mayoral commission that were not directly relevant to the business of the public body).

Additionally, this office has reviewed section 2.03.060(a) of the Code and notes that it does not prohibit a member of the public from asking the Board to reconsider a decision previously made. Section 2.03.060(a) of the Code defines "village business" as including "information about village events; *issues that the public body has the authority to address*; items listed on the agenda; and *items or issues previously voted on by the village board* or that the village board has the authority to consider or vote on in the future." (Emphasis added.) Under that broad definition, comments pertaining to the Board's enforcement of a zoning ordinance appear to fall within the meaning of "village business," even if the Board has previously voted on the matter. In any event, the recording of the meeting indicates that the Board's restrictions of [REDACTED] comments were directed towards her references to particular trustees in connection with public business of the Board, rather than repetitiousness.

The Board also highlighted [REDACTED] conduct at previous meetings, including the Board's August 21, 2017, meeting. This office has reviewed the recording of the Board's August 21, 2017, meeting and recognizes the Board's concerns about the animated manner in which [REDACTED] appeared to address the Board about the alleged businesses at issue. A public body's attempts to preserve decorum may not be unreasonable in those instances in which a member of the public engages in demonstrative actions and conduct that threatens disruption or becomes disruptive to the meeting. *See Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 387 (4th Cir. 2008) ("[D]isruption may take the form of * * * speaking in a tone or manner that threatens disruption."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 46149, issued April 10, 2018, at 5 (concluding that an individual's animated conduct, which included moving around the meeting room, continued raising of his voice, and repeated thrusting of his finger in the direction of the Board "disrupted the decorum of the meeting to the extent that the Board's

[REDACTED]
The Honorable Patrick Horcher
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interruption of his public comment was not unreasonable."). In this case, however, [REDACTED] did not appear to engage in the same type of belligerent or potentially threatening conduct. While [REDACTED] commented again on the alleged businesses at the September 5, 2017, meeting, she wrapped up her comments when the bell for the 5-minute limit rang; her comments did not further hold up the meeting. Under these limited circumstances, this office cannot conclude that [REDACTED] naming of the specific Trustees disturbed the decorum of the meeting. Accordingly, this office concludes that the Board improperly restricted portions of [REDACTED] public comments during its September 5, 2017, meeting.

In accordance with the conclusions expressed in this determination, this office requests that the Board permit members of the public to address and raise concerns regarding the conduct of individual Board members which relates to public business at future meetings, notwithstanding that individual Board members are not required to respond to comments. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

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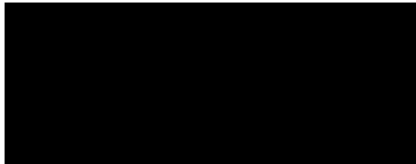


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 30, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55494

Dear [REDACTED]

The Public Access Counselor has received your Request for Review concerning an alleged Open Meetings Act (OMA) violation by the Mt Clare Village Board (Board) at its September 10, 2018, meeting. In a November 30, 2018, telephone conversation with an Assistant Attorney General in the Public Access Bureau, you confirmed that this matter may now be closed. Accordingly, this letter serves to close this matter.

If you have questions, please contact me at the Springfield address below.

Very truly yours,



CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

55494 o inf r mun

cc: The Honorable Kathy Fellin
Clerk, Village of Mt. Clare
410 Berry Street
Mt Clare, Illinois 62033



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 3, 2018

Mr. James P. Kelly
Matuszewich & Kelly, LLP
101 North Virginia Street
Suite 150
Crystal Lake, Illinois 60014

Via electronic mail

Ms. Nancy Lech
Supervisor
Hebron Township
10206 Seaman Road
Hebron, Illinois 60034
hebronsupervisor@gmail.com

RE: OMA Request for Review – 2013 PAC 24640

Dear Mr. Kelly and Ms. Lech:

Mr. Kelly filed the above-captioned Request for Review with this office alleging that the Hebron Township (Township) violated the Open Meetings Act at an April 6, 2013, meeting. In a telephone conversation on December 3, 2018, Mr. Kelly informed an Assistant Attorney General in the Public Access Bureau that he wished to withdraw the above-captioned Request for Review. Accordingly, this letter shall close this matter. If you have any questions, please contact me at the Chicago address listed below.

Very truly yours,

A black rectangular box redacting the signature of S. Piya Mukherjee.

S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

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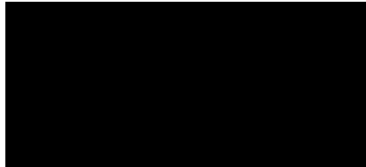


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 3, 2018

Via electronic mail



Via electronic mail

Ms. Stacie Mertes
City Clerk
City of Oglesby
110 East Walnut Street
Oglesby, Illinois 61348
oglesbyclerk@yahoo.com

RE: OMA Request for Review – 2015 PAC 35062

Dear [REDACTED] and Ms. Mertes:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On May 5, 2015, this office received [REDACTED] Request for Review alleging that the Oglesby City Council (Council) improperly entered closed session at its May 4, 2015, meeting to discuss commissioners' department assignments under the exception—to the general requirement to conduct meetings openly—in section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2014)). On July 6, 2015, this office forwarded a copy of [REDACTED] Request for Review to the Council and asked it to provide unredacted copies of the relevant meeting materials for this office's confidential review, together with a written response to the allegation. On July 27, 2015, this office received those materials. This office forwarded a copy of the Council's written answer to [REDACTED] on July 24, 2015, and he submitted a reply on July 30, 2015.

Section 2a of OMA (5 ILCS 120/2a (West 2014)) provides that "[a] public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act." Section 2a further provides, in relevant part:

The vote of each member on the question of holding a meeting closed to the public and a *citation to the specific exception* contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. (Emphasis added.)

Additionally, section 2(a) of OMA (5 ILCS 120/2(a) (West 2014)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Those exceptions, which must be strictly construed,¹ include section 2(c)(1) of OMA. That provision permits a public body to close a meeting to consider "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity."

In its response to this office, the Council stated that the City of Oglesby had elected commissioners on April 7, 2015, as authorized under article 4 of the Illinois Municipal Code (65 ILCS 5/4-1-1 *et seq.* West 2014)), which governs "The Commission Form of Municipal Government." The Council explained that it had then assigned commissioners to public offices during closed session at the May 4, 2015, meeting. The Council acknowledged that the minutes reflected that it went into executive session pursuant to section 2(c)(1), but contended that it had "simply referred to the wrong statutory section authorizing the execution session."² The Council maintained that the executive session was proper pursuant to section 2(c)(3) of OMA (5 ILCS 120/2(c)(3) (West 2014)), which permits a public body to close a portion of a meeting to discuss:

¹"[T]he exceptions are to be strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(a) (West 2014).

²Letter from James A. Andreoni, Oglesby, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (July 13, 2015), at 2.

[REDACTED]
Ms. Stacie Mertes
December 3, 2018
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The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

In his reply to that answer, [REDACTED] argued that the Council's citation of the section 2(c)(1) exception was misleading to members of the public because that exception pertains to specific employees rather than public officials. He expressed that he "[did] not necessarily believe that any of the commissioners * * * had any other alternative or malicious intentions by using the incorrect exemption to adjourn into executive session" but that "commissioners on the Oglesby City Council need to [be] more familiar with the Illinois Open Meetings Act in order to properly uphold it in the future."³


The Council acknowledged that it mistakenly cited section 2(c)(1) of OMA to enter closed session at its May 4, 2015, meeting to discuss the appointment of public officials to public offices. Accordingly, the Council did not adhere to the requirement to publicly cite and record in its meeting minutes the applicable section 2(c) exception. Because this appears to have been an inadvertent violation and because [REDACTED] does not dispute that the closed session discussion would have been permissible under section 2(c)(3), no action is required to remedy this technical violation. In the future, this office reminds the Council to identify the correct exception(s) under section 2(c) in open session before closing a meeting and to properly identify any such exception(s) in its meeting minutes.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5206 or the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Assistant Attorney General
Public Access Bureau

³Letter from [REDACTED] to Benjamin Reed, Assistant Attorney General, Public Access Bureau (July 30, 2015).


Ms. Stacie Mertes
December 3, 2018
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 3, 2018

Via electronic mail
Ms. Julie L. Ajster
Ajster Law Office
P.O. Box 61354
Peru, Illinois 61354
ajster@comcast.net

The Honorable Doug Biederstedt, Chairman
City of Peru Planning and Zoning Commission
1901 Fourth Street, P.O. Box 299
Peru, Illinois 61354-0299

RE: OMA Request for Review – 2018 PAC 54146

Dear Ms. Ajster and Mr. Biederstedt:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the City of Peru (City) Planning and Zoning Commission (Commission) did not provide sufficient advance notice of its vote to amend the City's Zoning Code during its July 18, 2018, meeting.

On July 23, 2018, Ms. Julie L. Ajster, of Ajster Law Office, submitted a Request for Review to the Public Access Bureau alleging that the Commission potentially violated OMA in connection with its July 18, 2018, meeting. Specifically, Ms. Ajster alleged that the Commission improperly took final action during the meeting when it voted to amend the City's Zoning Code without having set forth the general subject matter of that final action on the agenda. The Commission's July 18, 2018, meeting agenda listed the item: "Petition of Casey's Retail Company requesting a variance for property located at 1200 Shooting Park Road, Peru, IL[.]"¹

¹City of Peru Planning and Zoning Commission, Agenda Item [unnumbered] (July 18, 2018).

Ms. Julie L. Ajster
The Honorable Doug Biederstedt
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On July 31, 2018, this office forwarded a copy of the Request for Review to the Commission and asked it to provide this office with copies of the agenda and minutes of its July 18, 2018, meeting for this office's confidential review, together with a written response to Ms. Ajster's allegation. Not having received a response, this office sent a second letter to the Commission seeking the same materials on August 16, 2018.

On August 17, 2018, this office received the requested materials as well as two "Notice of Hearing" documents.² The Commission argued that it provided proper notice of its vote to amend the Zoning Code, claiming that "municipal and land use attorneys often use the words variance, amendment, modification, and other similar terms interchangeably."³ On August 22, 2018, this office sent a copy of the Commission's response to Ms. Ajster; she did not reply.

On August 20, 2018, an Assistant Attorney General (AAG) in the Public Access Bureau left a voicemail for the Commission requesting a copy of Article XV of the City's Zoning Code⁴ which was in effect at the time of its July 18, 2018, meeting. On August 27, 2018, this office received copies of that article and Ordinance No. 6141,⁵ which the Commission explained amended that article.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Notice of Final Action

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides, in pertinent part: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section

²This office notes that the Commission provided two agendas for its July 18, 2018, meeting, with different start times. The Commission did not explain why two were provided, which one was correct, or whether one or both were posted. However, because the text of the relevant agenda item is the same on both, and the requester does not contest the time(s) marked on the agendas, this office will not further address that issue.

³Letter from Herbert J. Klein, Jacob Klein, LTD, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 14, 2018), at 1.

⁴Peru, Ill., Zoning Code art. XV (2013).

⁵Peru, Ill., Ordinance 6141 (April 4, 2016).

Ms. Julie L. Ajster
The Honorable Doug Biederstedt
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2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that — that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The July 18, 2018, minutes show that the Commission unanimously voted to "approve a text amendment to the zoning ordinance and the variance to the storm water detention requirements."⁶

In her Request for Review, Ms. Ajster alleged that the Commission "voted on an Amendment to a zoning ordinance without said amendment being on the agenda."⁷ She argued that "[a]n Amendment and a Variance are two separate proposed changes to the Zoning Ordinance. Variances are addressed in Zoning Code 15.08. A Variance is a specific change to one particular parcel of property."⁸ In contrast, she stated: "Amendments are addressed in Zoning Code 15.11. Amendments pertain to all parcels or property in a city."⁹ Ms. Ajster also stated that at the Commission's July 18, 2018, meeting, "[she] voiced [her] concern with the Amendment as the amendment related to all zoning throughout the City and no notice had been given to other residents that an amendment would change their property too."¹⁰

⁶City of Peru Planning and Zoning Commission, Meeting, July 18, 2018, Minutes 2.

⁷Letter from Julie L. Ajster, Ajster Law Office, to the Public Access Counselor, Illinois Attorney General (July 23, 2018), at 1.

⁸Letter from Julie L. Ajster, Ajster Law Office, to the Public Access Counselor, Illinois Attorney General (July 23, 2018), at 2.

⁹Letter from Julie L. Ajster, Ajster Law Office, to the Public Access Counselor, Illinois Attorney General (July 23, 2018), at 2.

¹⁰Letter from Julie L. Ajster, Ajster Law Office, to the Public Access Counselor, Illinois Attorney General (July 23, 2018), at 2.

Ms. Julie L. Ajster
The Honorable Doug Biederstedt
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In its response to this office, the Commission denied that it violated section 2.02(c) of OMA, arguing that "[t]he Act merely requires that the action to be taken be germane to the agenda." (Emphasis in original.)¹¹ However, the case the Commission cited for this proposition, *In re Foxfield Subdivision*, 396 Ill. App. 3d 989 (2d Dist. 2009), was decided before section 2.02(c) was added to OMA. The legislative history referenced above demonstrates that an agenda must include information that is more descriptive than merely "germane"¹² to the action taken to satisfy the "general subject matter" requirement in section 2.02(c) of OMA.¹³

The Commission also argued that "the posted agendas clearly stated items related to the proposed development of a Casey's at 1200 Shooting Park Road, Peru, IL would be considered[.]" acknowledging that "[t]he agendas used the term 'variance'."¹⁴ The Commission argued that:

Black's Law Dictionary defines a variance, within the area of zoning law, as "Permission to depart from the literal requirements of a zoning ordinance." Black's defines an amendment as "To change or modify for the better. To alter by modification, deletion, or addition." [Citation.] The City contends that those definitions are essentially the same, in that "departing from" and "altering by modification" have the same meaning.¹⁵

Yet, just as "variance" has a particular meaning within the area of zoning law, so does "amendment." Illinois courts have recognized the distinction between variances and zoning

¹¹Letter from Herbert J. Klein, Jacob Klein, LTD, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 14, 2018), at 1.

¹²"Germane" is defined as "[r]elavent; pertinent." Black's Law Dictionary (9th ed. 2009), available at Westlaw BLACKS.

¹³Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in part: "Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting, but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda."

¹⁴Letter from Herbert J. Klein, Jacob Klein, LTD, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 14, 2018), at 1.

¹⁵Letter from Herbert J. Klein, Jacob Klein, LTD, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 14, 2018), at 1.

amendments. For instance, in *Jones v. City of Carbondale*, 217 Ill. App. 3d 85, 89 (5th Dist. 1991), the Illinois Appellate Court explained:

Zoning ordinances typically provide three mechanisms to accommodate circumstances for which the generalized ordinance regulatory scheme is imperfect: the variance, zoning amendment, and special use permit. [Citation.] While these tools are similar in that they all deviate from the principal permitted uses of a zoning ordinance, they differ in their scope and purpose.

The court further explained that while "[a] variance is a grant of relief to an owner from the literal requirements of the ordinance where literal enforcement would cause him undue hardship[.]" "[a]n amendment to a zoning ordinance changes or alters the original ordinance or some of its provisions." *Jones*, 217 Ill. App. 3d at 89. Thus, the Commission's definitional argument is unavailing.

Addressing the meaning of section 2.02(c), the Commission further argued:

The agenda does not need to have the specificity of the exact provisions of the City Zoning ordinance that may be recommended for change by the Planning and Zoning Commission nor the term that would be used in drafting the City ordinances to effectuate the change. To require such would tie the Planning and Zoning Commission's hands so that if, based on evidence at the hearing, or interpretations of existing zoning ordinances, differing options or solutions were identified, the hearings would be endlessly and needlessly continued to provide specific agenda items. This is not the intent nor requirements of the Open Meetings Act.¹⁶

Nonetheless, the Commission also noted that it had published a hearing notice in a local newspaper for the July 18, 2018, meeting, which depicted a zoning variance and an amendment to the Zoning Code as separate actions sought by Casey's Retail Company.¹⁷ If the Commission was able to delineate and set out both of those actions in the hearing notice dated June 27, 2018, it is unclear why it would have posed any difficulty to do the same in the agenda posted over two weeks later.

¹⁶Letter from Herbert J. Klein, Jacob Klein, LTD, to Marie Hollister, Assistant Attorney General, Public Access Bureau (August 14, 2018), at 2.

¹⁷Notice of Hearing Before the Planning/Zoning Commission of the City of Peru, Illinois (June 27, 2018).

Ms. Julie L. Ajster
The Honorable Doug Biederstedt
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Based on this office's review of the City's Zoning Code in effect at the time of the Commission's July 18, 2018, meeting, variances and amendments are distinct actions. The Zoning Code provides separate administrative processes for variances and amendments. Variances are addressed in section 15.08, called "Variations."¹⁸ In this section, the Zoning Code repeatedly references "the property in question" and the specific property's "owner." Amendments are addressed in section 15.11 of the Zoning Code, which states that "[t]he regulations imposed and the districts created under the authority of this Ordinance may be amended, from time to time, by ordinance in accordance with applicable Illinois Statutes."¹⁹ Thus, as articulated in *Jones v. City of Carbondale*, a variance applies to a particular parcel of property, whereas an amendment can have much broader impact.

This office's review of the agenda for the Commission's July 18, 2018, meeting confirmed that no item identified the general subject matter of the final action that the Commission took to amend the Zoning Code. A member of the public reading the agenda in advance of the Commission's July 18, 2018, meeting would not have had notice that the Commission planned to vote on that matter, as only the variance was listed. Although the Commission argues that "variance" and "amendment" have the same meaning, the minutes specifically list two separate actions that were approved—an amendment and a variance. Further, the Zoning Code provides separate processes for each type of action in accordance with their substantive differences. An agenda item for a business's request for a variance does not provide the general subject matter of a Zoning Code amendment because, as Ms. Ajster pointed out, the entire City may be affected by a Zoning Code amendment, whereas a variance directly affects only a specific property. Accordingly, this office concludes that the Commission violated section 2.02(c) of OMA during its July 18, 2018, meeting by approving a text amendment to its Zoning Code without having listed the general subject matter of that final action on the meeting agenda. Because of the date of the violation, the Commission is unable to take the appropriate remedial action of reconsidering and re-voting on the amendment during a properly-noticed open meeting. However, this office cautions the Commission to list in its future meeting agendas the general subject matter of each item on which it intends to vote and to otherwise comply with all of the requirements of OMA.

¹⁸Peru, Ill., Zoning Code art. XV, § 15.08 (2013).

¹⁹Peru, Ill., Zoning Code art. XV, § 15.11 (2013).

Ms. Julie L. Ajster
The Honorable Doug Biederstedt
December 3, 2018
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: Mr. Herbert J. Klein
Jacob Klein, LTD
925 Shooting Park Road, Suite A
Peru, Illinois 61354



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 3, 2018

Via electronic mail
Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

RE: OMA Request for Review – 2018 PAC 55513

Dear Mr. Kraft:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Board of Trustees of DuPage Township (Board) violated OMA in connection with the public comment portion of its October 23, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in relevant part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

Your October 29, 2018, Request for Review alleged that the Board violated OMA during its October 23, 2018, meeting by applying public comment rules adopted earlier that meeting to your remarks during the public comment portion of the meeting. Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." You argued that the phrase "established and recorded" in section 2.06(g) signifies that a public body may not apply public comment rules during the same meeting in which they are adopted. You further argued that even if the new public comment rules took effect immediately,

the Township Supervisor, Mr. William M. Mayer, "selectively enforced" them.¹ Additionally, you argued that some aspects of the Board's new public comment rules impermissibly restrict the public's right to address its members. You provided a link to a video recording of the meeting.²

As to your argument about when public comment rules take effect, section 80-10 of the Township Code (60 ILCS 1/80-10 (West 2016)) authorizes a township board to "adopt rules not inconsistent with this Code to govern its meetings." No provision of the Township Code appears to prohibit the application of public comment rules after they have been adopted during a meeting. The Board's public comment ordinance stated that it "shall be effective upon its passage."³ Therefore, the Board's new public comment rules took effect before the public comment portion of the Board's October 23, 2018, meeting.

Moreover, even a public body that has not adopted rules governing public comment has the inherent authority to put a stop to meeting disruptions. *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 924 (N.D. Ill. 2009) (noting that a chairman of a meeting may put an end to disruptive speech). The video recording shows that you disrupted the meeting by refusing to stop speaking long after your time had expired, raising your voice over Supervisor Mayer's and requiring physical intervention to leave the meeting room.

Turning to your argument that the Board selectively enforced its public comment rules, a public body that has adopted rules governing public comment violates section 2.06(g) of OMA when it either: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules; or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules that unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7. Because "the primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings[,] "⁴ allowing a commenter some extra time to address the members of the public body generally does not run afoul of section 2.06(g) of OMA, in contrast with cutting off a commenter who was not being disruptive or otherwise violating the public body's public comment rules before expiration of the time period prescribed by those rules. The video recording of the meeting reflects that Supervisor Mayer allowed another commenter who

¹E-mail from John Kraft to AG PAC (October 29, 2018).

²Edgar County Watchdogs, *DuPage Township Meeting - 10-23-2018*, YouTube (Oct. 28, 2018), <https://youtu.be/e6FGk-89zxI>.

³DuPage Township, Ill., Ordinance No. 18-07 (October 23, 2018), available at <http://www.dupagetownship.com/wp-content/uploads/2018/10/18-07-Public-Participation-at-Meetings.pdf>.

⁴Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6.

Mr. John Kraft
December 3, 2018
Page 3

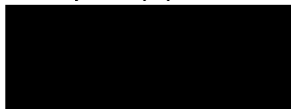
was mid-sentence to finish his thought after the three minute alarm rang.⁵ The fact that Supervisor Mayer allowed this member of the public more than three minutes to address the Board does not support the allegation that the Board violated anyone's right to address its members under these circumstances.⁶

Similarly, your claims that individuals ate food during the meeting, spoke without having been recognized, and drummed on the table do not support the allegation that the Board violated anyone's right to address its members. Because the facts you have alleged, together with the video recording of the meeting, do not indicate that the Board improperly restricted any member of the public from addressing its members during its October 23, 2018, meeting, this office has determined that this Request for Review is unfounded.

The Office of the Public Access Counselor, however, is also charged with providing advice and education to both the public and public officials. 15 ILCS 205/7(a), (b), (c) (West 2016). In that capacity, this office notes that because section 2.06(g) of OMA expressly refers to "address[ing] public *officials*" (emphasis added), a member of the public may address remarks to the entire Board or individual trustees. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2018, at 5-6. Additionally, the right to comment during an open meeting includes the right to ask questions of public officials, notwithstanding that OMA does not require public officials to respond to questions or comments. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2.

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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⁵Edgar County Watchdogs, *DuPage Township Meeting - 10-23-2018*, YouTube (Oct. 28, 2018), <https://youtu.be/e6FGk-89zxI>, at 55:15.

⁶This office notes that the rule in question allows the presiding officer discretion to extend the three minute time period. DuPage Township, Ill., Ordinance No. 18-07 (October 23, 2018), *available at* <http://www.dupagetownship.com/wp-content/uploads/2018/10/18-07-Public-Participation-at-Meetings.pdf>.

Mr. John Kraft
December 3, 2018
Page 4

cc: *Via electronic mail*
The Honorable William M. Mayer, Supervisor
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440
wmmayer@dupagetownship.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 4, 2018

Via electronic mail



RE: OMA Request for Review – 2013 PAC 24448

Dear [REDACTED]

On May 6, 2013, the Public Access Counselor received your Request for Review submitted pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2012)). Your Request for Review alleged that the Chester-East Lincoln School District No. 61 Board of Education violated OMA in connection with its May 5, 2013, special meeting. On December 3, 2018, you advised this office that it could close this Request for Review. Accordingly, this file is closed. Please contact me at (217) 524-7958 if you have questions.

Very truly yours,



LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

24448 o wdrawn sd

cc: *Via electronic mail*

The Honorable Jeff Brooks, President
Chester-East Lincoln School District No. 61 Board of Education
jbrooks@cel61.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 4, 2018

Via electronic mail

Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

Via electronic mail

Ms. Nanci Rogers

Robbins Schwartz

55 West Monroe, Suite 800

Chicago, Illinois 60603

nrogers@robbins-schwartz.com

RE: OMA Request for Review – 2014 PAC 31511

Dear Mr. Kraft and Ms. Rogers:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau is unable to conclude from the available information that the College of DuPage (College) Board of Trustees (Board) violated the requirements of OMA in connection with its September 25, 2014, meeting.

On September 29, 2014, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA in several ways at its September 25, 2014, meeting. The allegations in Mr. Kraft's Request for Review largely concern the Board's rules governing public comment and the Board's implementation of those rules at the meeting. A portion of Mr. Kraft's Request for Review also alleges that, in general, the location of the Board's meetings is too small to accommodate all members of the public who wished to attend

Mr. John Kraft
Ms. Nanci Rogers
December 4, 2018
Page 2

the meetings.¹ In response to a request from this office, the public body submitted a detailed answer to the allegations in the Request for Review, as well as the relevant agenda and meeting minutes.

The Public Access Bureau has reviewed the materials submitted by Mr. Kraft and the Board. As noted in the Board's response, Mr. Kraft does not allege, nor is there any indication, that he or any other member of the public was prohibited from addressing the Board at the September 25, 2014, meeting. On the contrary, the available information indicates that everyone present at the meeting who wished to comment was permitted to do so even though the Board required people who wished to comment on agenda items and non-agenda items to speak at separate times in the meeting. The Request for Review alleges that the first speaker was interrupted during the agenda item public comment portion of the meeting and required to speak during the non-agenda item portion even though her topic pertained to an agenda item; no facts were provided to support the allegation that the speaker's public comment pertained to an agenda item. In the absence of evidence that the Board enforced its rules or practices concerning public comment to improperly restrict a member of the public from exercising his or her statutory right to address the Board, there is no basis for this office to conclude that the Board violated section 2.06(g) of OMA at its September 25, 2014, meeting. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 50371*, issued November 30, 2017, at 2.

Moreover, the available information does not support the allegation that the September 25, 2014, meeting was not reasonably accessible to all members of the public who wished to attend the meeting.² In its response to this office, the Board explained that its meetings are held in a room where:

[T]he Board sits at a horseshoe shaped table facing the audience, and there are 30 general public seats available. At the front of the general seating area are press tables and to the side of the room is an area for people video recording or photographing the meeting.

¹Mr. Kraft's Request for Review also alleged that the Board violated OMA by providing members of the press a designated section of seating in the Board room but did not allow him to sit within that section. Although section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) requires a venue be reasonably accessible to the public, no provision of OMA governs the way in which a public body chooses to assign seating for its meetings, if at all. Therefore, this office will not review this allegation because it does not set forth facts supporting an OMA violation.

²Section 2.01 of OMA provides, in pertinent part, that "[a]ll meetings required by [the] Act to be public shall be held at specified times and places which are convenient and open to the public." As noted by the Illinois Appellate Court, "[t]he concept of public convenience seems to imply a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston County Bd.*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003).

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* * * in almost all meetings that have ever taken place in the room there has remained numerous seats for the public * * * Nevertheless, recognizing that unexpected overflow crowds are possible, the College also uses state-of-the-art technology to broadcast the meeting to nearby overflow rooms where ample seating (80 seats) and comfortable room conditions prevail.^[3]

There is no indication that at this meeting, any member of the public could not hear the business being conducted during the meeting, could not participate in the proceedings, or otherwise was prevented from exercising his or her statutory right to attend the meeting. In fact, there is no indication that those who wished to attend were unable to be physically present in the meeting room. Even assuming that all members of the public who wished to attend the meeting were not able to be physically present in the meeting room, section 2.01 of OMA contains no such requirement. See *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 361 (4th Dist. 2003) ("[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.") (Emphasis in original.))


Additionally, Mr. Kraft's Request for Review alleged that the doors to the Board meeting were locked, which restricted reasonable access to the September 25, 2014, meeting. The Board's response clarified that the doors were briefly locked due to an electronic locking device that engages automatically at 11:00 p.m. and that the College police officers quickly unlocked the doors allowing all who wished to reenter to do so. There is no indication that any individual who wished to attend the meeting was prevented from doing so. This office has previously determined that a brief and inadvertent locking of meeting room doors in which no member of the public was prevented from attending a meeting does not violate the requirements of section 2.01 of OMA. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 36975, issued June 26, 2017, at 5. Accordingly, the Public Access Bureau concludes that Board did not violate the requirements of OMA in connection with its September 25, 2014, meeting.

³Letter from Kenneth M. Florey, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Office of the Attorney General (October 29, 2014) at 7.

Mr. John Kraft
Ms. Nanci Rogers
December 4, 2018
Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact me at the Chicago address on the first page of this letter if you have questions.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Ms. Deanne Mazzochi
Chair, Board of Trustees
College of DuPage
425 Fawell Boulevard
Glen Ellyn, Illinois 60137
bot-mazzochid@cod.edu



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 4, 2018

Via electronic mail
Mr. Steve Stein
[REDACTED]

Via electronic mail
Mr. Robert C. Gates
Kavanagh, Scully, Sudow
White & Frederick, P.C.
301 S.W. Adams Street, Suite 700
Peoria, Illinois 61602-1574
robertgates@ksswf.com

RE: OMA Request for Review – 2015 PAC 34449

Dear Mr. Stein and Mr. Gates:

On March 31, 2015, the Public Access Bureau received a Request for Review pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2014)) from Mr. Steve Stein, on behalf of the *Peoria Journal Star*, alleging that the Washington Volunteer Fire Department and Rescue Squad violated OMA at its March 10, 2015, regular meeting. On December 4, 2018, Mr. Stein advised this office by telephone that he wished to withdraw this Request for Review.

Accordingly, this letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address below.

Very truly yours,
[REDACTED]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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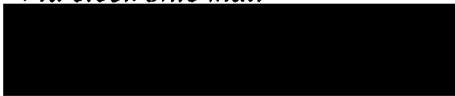


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2018

Via electronic mail



Via electronic mail

Mr. Shawn P. Flaherty
Attorney for South Elgin and Countrywide Fire Protection District
Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd.
1804 North Naper Boulevard, Suite 350
Naperville, Illinois 60563
sflaherty@ottosenbritz.com

RE: OMA Request for Review – 2015 PAC 36427

Dear [REDACTED] and Mr. Flaherty:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On July 21, 2015, this office received [REDACTED] Request for Review questioning the extent to which the South Elgin and Countrywide Fire Protection District's Board of Trustees (Board) had held unauthorized closed session discussions in 2015. [REDACTED] stated that the Board had recently reviewed its closed session minutes from January 2015 through July 7, 2015, and that although the Board's attorney had "indicated the board had violated the Open Meetings Act in those closed meetings[.]" "the board is indicating via a letter to media only one error — a May 11 meeting when the board discussed replacing a member who was moving out of town."¹ [REDACTED] asked this office to review the Board's closed session

¹E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 21, 2015).

██████████
Mr. Shawn P. Flaherty
December 5, 2018
Page 2

minutes from the prior six months, but acknowledged that this office only reviewed alleged violations from the previous 60 days.²

On August 21, 2015, this office forwarded a copy of the Request for Review to the Board and asked it to respond to ██████████ allegations. On August 31, 2015, this office received a written response from the Board's attorney, Mr. Shawn Flaherty. On September 23, 2015, this office forwarded a copy of the response to ██████████ who replied that same day. She expressed, in pertinent part, that she "just want[ed] an accounting of how many times [the Board] strayed into areas not allowed under the act."³

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2014)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Those "exceptions are to be strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2014).


In the Board's written response, Mr. Flaherty explained that ██████████ had called the Board's attention to her concern that the Board had improperly discussed certain matters in closed session during its July 7, 2015, meeting. He stated that the "[t]he Board took this concern very seriously, which resulted in a decision by the District Board members to vote to release the minutes of every closed session meeting for calendar year 2015 with redactions as necessary to protect the identity and location of proposed fire station property sites."⁴ Mr. Flaherty confirmed that he reviewed those closed session minutes at the request of the Board and that it was his "determination that one or more possible inadvertent violation or violations of Section 2(c) of the OMA had occurred."⁵ Mr. Flaherty asserted that the Board took immediate corrective action by voting to approve the release of the closed session minutes, including the minutes of the two closed sessions within the scope of this office's review (June 8, 2015, and July 7, 2015), and by asking his firm to provide additional OMA training to its members.

²At the time ██████████ submitted her Request for Review, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provided: "A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General *not later than 60 days after the alleged violation.*" (Emphasis added.)

³E-mail from ██████████ to [Kathleen Jedlicka] (September 23, 2015).

⁴Letter from Shawn P. Flaherty, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., to Benjamin Reed, Assistant Attorney General, Public Access Bureau (August 28, 2015), at 1.


⁵Letter from Shawn P. Flaherty, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., to Benjamin Reed, Assistant Attorney General, Public Access Bureau (August 28, 2015), at 1.


Mr. Shawn P. Flaherty
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This office's review of the closed session minutes from the Board's June 8, 2015, and July 7, 2015, meetings reveals that the Board held unauthorized closed session discussions during each meeting. Accordingly, the Board violated the openness requirements of OMA at each meeting. Because the Board subsequently released copies of its closed session minutes from 2015, which are detailed, and also arranged for its members to take additional OMA training, this office has determined that no further remedial action is required under these circumstances.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2018

Via electronic mail

Mr. Robert McCoy
Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, Illinois 61602
robert.mccoy@mhtlaw.com

Via electronic mail

Mr. Louis Apostol
Illinois Property Tax Appeal Board
401 South Spring Street, Room 402
Springfield, Illinois 62706
louis.apostol@illinois.gov

Re: OMA Request for Review – 2016 PAC 45316

Dear Mr. McCoy and Mr. Apostol:

On December 5, 2016, the Public Access Bureau received the above captioned Request for Review from Mr. Robert McCoy of Miller, Hall & Triggs, LLC, on behalf of the City of East Peoria (City), pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Property Tax Appeal Board (PTAB) violated OMA at its October 12, 2016, meeting. In particular, Mr. McCoy alleged that PTAB's meeting agenda did not provide sufficient notice of final action in violation of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) and that PTAB took final action without a public recital of the nature of the business being considered, in violation of section 2(e) of OMA (5 ILCS 120/2(e) (West 2016)).


In addition to filing a Request for Review with the Public Access Bureau, the City filed an administrative review action with the Illinois Appellate Court for the Third District contesting PTAB's decision to reduce the assessed valuation of two pieces of property in a tax appeal in which the City had attempted to intervene as a party. In the administrative review action, the City also alleged that PTAB had violated sections 2.02(c) and 2(e) of OMA at its

Mr. Robert McCoy
Mr. Louis Apostol
December 5, 2018
Page 2

October 12, 2016, meeting. On November 16, 2018, the court issued a Rule 23 order on the City's administrative review action concluding that PTAB had violated OMA. The order also remands the matter to PTAB, which remediates the OMA violations. *See City of East Peoria v. Property Tax Appeal Board, et al.*, 2018 IL App (3d) 160689-U. Because the OMA violations alleged in the City's Request for Review pending with the Public Access Bureau are the same violations that were considered and addressed by the court in the City's administrative review action, this office shall take no further action with respect to this request for review. *See 5 ILCS 120/3.5(f)* (West 2016).¹

If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address listed above. This correspondence serves to close this matter.

Very truly yours,


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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¹In addition, section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2016)) provides that "the Attorney General may not issue an opinion concerning a specific matter with respect to which a lawsuit has been filed under Section 3 of the Open Meetings Act[.]" This matter was held open until this office received notification that the OMA matters had been addressed in the administrative review action.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2018

Via electronic mail



Via electronic mail

Mr. Gregory A. Brady
Acting Vice President and General Counsel
Northern Illinois University
Altgeld Hall 300
DeKalb, Illinois 60115
gbrady@niu.edu

RE: OMA Request for Review – 2017 PAC 50176

Dear [REDACTED] and Mr. Brady:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Resource, Space, and Budget Committee (RSB Committee) of Northern Illinois University (University) is a public body that improperly held meetings without adhering to the requirements of OMA.

BACKGROUND

On October 23, 2017, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the RSB Committee had held meetings without following the requirements of OMA. Specifically, he alleged that:

1. There was no 12 month posting of the meeting at the beginning of the calendar year.
2. No public comment allowed.
3. No meeting minutes available.

[REDACTED]
Mr. Gregory Brady
December 5, 2018
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4. Held as a permanent closed session.
5. No Agenda posted [], anywhere, 48 hours in advance of the meeting.^[1]

According to [REDACTED] the RSB Committee advises the University Council on matters pertaining to the use of public funds. [REDACTED] provided this office with a copy of an October 6, 2017, RSB Committee meeting agenda, which he stated was given to him after the meeting had occurred.

On November 2, 2017, this office forwarded a copy of the Request for Review to the University's Office of General Counsel and asked the RSB Committee or its representative to address the allegations in [REDACTED] Request for Review. In particular, this office asked the RSB Committee to clarify whether it holds meetings on a regular basis and, if so, to clarify whether it had posted a meeting schedule. If the Committee had posted the agenda for its October 6, 2017, meeting, then this office asked the Committee to specify when and where the agenda was posted. Additionally, this office asked the Committee to provide this office with copies of the agenda, minutes, and any recordings of that meeting. On November 13, 2017, this office received a written response from the University and copies of an agenda, a transcript of a chair's report, and notes of the October 6, 2017, meeting. In its written response, the University asserted that the RSB Committee is not a "public body" subject to the requirements of OMA. On November 15, 2017, this office forwarded a copy of the University's response to [REDACTED]. [REDACTED] he replied on November 26, 2017, disputing the University's claims. On December 12, 2017, [REDACTED] informed this office that the University had recently announced that the University Council and its seven standing committees would seek to comply with OMA. On June 1, 2018, the University confirmed to this office that it was working toward voluntary compliance with OMA with regard to the University Council and its standing committees, including the RSB Committee.

DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (2016).

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "public body" as:

¹E-mail from [REDACTED] to Public Access Counselor (October 23, 2017).

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

An "advisory body," for purposes of OMA, is an entity that has defined responsibilities and is a formal part of the structure of the public body that it advises. *Board of Regents of Regency University System v. Reynard*, 292 Ill. App. 3d 968, 977-78 (4th Dist. 1997). In contrast, OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal" affairs of a public body. *Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1977). Factors to consider in determining whether a group constitutes an advisory body under OMA include:

who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; whether its role is solely advisory or whether it also has a deliberative or investigative function; whether the entity is subject to government control or otherwise accountable to any public body; whether the group has a budget; its place within the larger organization or institution of which it is a part; and the impact of decisions or recommendations that the group makes. *University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 865 (1st Dist. 2003).

In *Stukel*, the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education. *Stukel*, 344 Ill. App. 3d at 857-58. The court held that the Council was not an advisory body of IBHE in part because it was not incorporated into the formal organizational structure of IBHE, a factor that the court identified as a "*primary consideration* in determining whether an organization is a public body under the Meetings Act." (Emphasis added.) *Stukel*, 344 Ill. App. 3d at 865. The court explained that "the Council was formed by the presidents and chancellors of the various state universities to express its views to the IBHE. Granted, its role is advisory but that role is one that the Council [and not IBHE] created." *Stukel*, 344 Ill. App. 3d at 866. The court also noted that the plaintiff's complaint did not allege that the

group had a "deliberative or investigative function in relation to the IBHE or that the Council is subject to government control. It does not appear that the Council is otherwise accountable to any public body. It does not appear to have a budget[.]" *Stukel*, 344 Ill. App. 3d at 866. Further, "no member of the Council is a member of the IBHE." *Stukel*, 344 Ill. App. 3d at 866; *see also Pope v. Parkinson*, 48 Ill. App. 3d 797, 800 (4th Dist. 1997) (committee of four faculty members and four students that advised director of sports stadium and chancellor was not an advisory body because OMA "is not intended to open to the public the deliberations of merely informal advisory committees who discuss internal University affairs."); *People ex rel. Cooper v. Carlson*, 28 Ill. App. 3d 569, 572 (2d Dist. 1975) (OMA does not apply to voluntary "technical staff" meetings of "department heads or employees who seek to improve with dispatch their performance or function of assisting in the conduct of the people's business.").

Conversely, in *Reynard*, the appellate court concluded that the Athletic Council of Illinois State University (ISU) was an advisory body subject to FOIA. *Reynard*, 292 Ill. App. 3d at 979. The Athletic Council serves "as an advisory body to the athletic director, with primary advisory responsibility to the president. It gives advice on the development of budgets and policies governing the intercollegiate athletic program." *Reynard*, 292 Ill. App. 3d at 971. The Athletic Council "exists to provide faculty input to the decision-making bodies at ISU." *Reynard*, 292 Ill. App. 3d at 972. The athletic director "is free to reject its advice and there have been occasions when he has done so. The Council deals only with internal ISU matters, it has no budget, and none of its members are paid." *Reynard*, 292 Ill. App. 3d at 972. In concluding that the Athletic Council was an advisory body subject to the requirements of OMA, however, the court emphasized that the Council is "part of the formal organizational structure of ISU and its duties and responsibilities are set forth in the supplement [to the bylaws of the ISU Senate]. The broad scope of the Council's responsibilities as set forth in the supplement contrasts sharply with the limited duties of the committee in *Pope [v. Parkinson]*." *Reynard*, 292 Ill. App. 3d at 978.

In its response to this office, the University asserted that "the RSB Committee is but one of the numerous committees internal to the University," yet "it is unique in that it [is] one of only two committees that are standing committees of both the University Council and its related council, the Faculty Senate."² According to the University, the University Council is its shared governance body. Under the University's Constitution, the University Council can

²Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 4.

Mr. Gregory Brady

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establish standing committees as necessary to carry out its duties.³ The University asserted that the University Bylaws, which define the standing committees,⁴ are internal rules and regulations of the University Council and do not require approval or ratification by the University's Board of Trustees (Board). Similarly, the University asserted that the Faculty Senate is separate from the Board and that its purpose is to recognize the faculty's right "to represent its constituency."⁵ The Faculty Senate Bylaws provide for the Faculty Senate's standing committees.⁶ The University argued that the unique nature of the RSB Committee as a creature of both the University Council and Faculty Senate, as well as the sheer amount and variety of University committees, indicate the extent to which it would be unreasonable to "requir[e] each committee of the University to open their doors to the general public."⁷ The University next applied the *Stukel* factors:

(1) Who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure

The University explained that the RSB Committee's composition is set forth in Article 2.6 of the University Bylaws and Article 3.6 of the Faculty Senate Bylaws. Article 2.6 of the University Bylaws provides that the RSB Committee is to be comprised of 12 faculty members, one student appointed by the Student Association, one Supportive Professional staff member and one Operating Staff member, and three nonvoting members. Six of the faculty members must be members of the University Council and appointed with the advice and consent of the University Council, while the remaining six must be members of the Faculty Senate and appointed with the advice and consent of the Faculty Senate. Voting members of the RSB

³Northern Illinois University, University Council, Constitution of Northern Illinois University, Article 6: Faculties, Standing Committees, Councils and Boards of the Faculty and Administration, 6.1.2 Standing Committees of the University, https://www.niu.edu/u_council/constitution/constitution/page5.shtml#article6 (last visited June 26, 2018).

⁴Northern Illinois University, University Council, Bylaws of Northern Illinois University, Article 2: Standing Committees of the University Council, 2.6 Resources, Space and Budget Committee, https://www.niu.edu/u_council/constitution/bylaws/article02.shtml (last visited June 26, 2018).

⁵Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 4.

⁶Northern Illinois University, University Council, Faculty Senate Bylaws, Article 3: Standing Committees of the Faculty Senate, 3.6 Faculty Senate-University Council Resources, Space and Budget Committee, https://www.niu.edu/u_council/faculty_senate/bylaws/index.shtml#anchor3732399 (last visited June 26, 2018).

⁷Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 4-7.

Committee serve a one-year term and may be reappointed. None of the members receive additional compensation for their participation on the RSB Committee.

(2) The entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute

Under Article 2.6 of the University Bylaws, the duties of the RSB Committee include participating in long-range planning with University leadership; advising University leadership regarding goals and priorities for the use of resources, space, and budgets; with periodic progress evaluations; making reports and recommendations to the Faculty Senate and the University Council regarding resource allocations and utilization; and advising University leadership on critical budget issues.

(3) Whether the entity's role is solely advisory or whether it also has a deliberative or investigative function

The University contended that the RSB Committee's role is merely advisory and thus akin to the group analyzed in *Stukel*. The University argued, in pertinent part:

[T]he RSB Committee is solely advisory. It does not make findings. It does not make binding determinations. It does not conduct investigations. It is not vested with decision-making powers. * * * [A]ny substantive academic policy recommendations must be brought to the University Council and cannot be acted upon by the RSB Committee alone. The RSB Committee makes recommendations and provides advice to university administrators, the University Council, and the Faculty Senate on matters pertaining to internal university affairs.^[8]

The University further argued that the RSB Committee is distinguishable from the public body in *Reynard*:

⁸Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 10.

Mr. Gregory Brady

December 5, 2018

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It is clear that the Athletic Council in Reynard had significantly more authority and responsibility in the creation and development of policies and budgets of the athletics program at Illinois State University than the RSB Committee has at Northern Illinois University. The budget matters that are reviewed by the RSB Committee are not created or developed by the RSB Committee. Instead, they are created and developed by university administrators. The RSB Committee is utilized to provide important insight, perspective and knowledge from its membership for proposed budgets and budgeting policy initiatives. However, it is not charged with the creation and development of budgets and policy.⁹

(4) Whether the entity is subject to government control or otherwise accountable to any public body

The University claimed that "[t]he RSB Committee is not subject to control or accountable to any public body. If it fails to perform its duties or responsibilities, there are no identified consequences."¹⁰ However, the University also directed this office to Article 6.1.2 of the University Constitution,¹¹ which provides:

There shall be standing committees of the University Council as designated in the bylaws.

6.1.2.1 These committees shall report all actions to the University Council, through the distribution of minutes to the University Council, through annual reports of their activities submitted to the University Council, and through the periodic

⁹Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 10-11.

¹⁰Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 11.

¹¹Northern Illinois University, University Council, Constitution of Northern Illinois University, Article 6: Faculties, Standing Committees, Councils and Boards of the Faculty and Administration, 6.1.2 Standing Committees of the University, https://www.niu.edu/u_council/constitution/constitution/page5.shtml#article6 (last visited June 26, 2018).

presentation of action summaries.

6.1.2.2 Any actions which these committees recognize as involving a substantive change in academic policy should be submitted for University Council approval. If action is taken without University Council approval, which the University Council agrees (by majority vote) represents a substantive change in academic policy, the committee may be asked to submit the action to the University Council for review.

Further, as noted above, six of the faculty members are members of the University Council who are appointed with the advice and consent of the University Council, while the other six members are members of the Faculty Senate who are appointed with the advice and consent of that entity. Thus, the University exercises some degree of control over the RSB Committee by influencing who serves on the RSB Committee.

(5) Whether the group has a budget

The University asserted that RSB Committee does not have a budget of its own.

(6) The entity's place within the larger organization or institution of which it is a part

The University reiterated that the RSB Committee is a standing committee of both the University Council and the Faculty Senate.

(7) The impact of decisions or recommendations that the group makes

The University acknowledged that "[t]he impact of the recommendations and advice that the RSB Committee makes is important[.]" as "the RSB Committee provides valuable information and views for consideration by identified university administrators, the University

Council and to the Faculty Senate."¹² Nonetheless, the University stated, "the RSB Committee still performs an advisory function, as opposing to a binding function for the University."¹³

In his reply to this office, [REDACTED] disputed the University's characterization of the RSB Committee. [REDACTED] argued that the RSB Committee is part of the formal organizational structure of the University, like the Athletic Council in *Reynard*; just as the RSB Committee was created by the University Council, a subsidiary body of the Board, the Athletic Council was created by ISU's Academic Senate, a subsidiary body of ISU's Board of Regents. [REDACTED] noted that the RSB Committee's duties and responsibilities are laid out in the University Council's bylaws "just like the Athletic Council of ISU [has] its duties and responsibilities [] set forth by the Academic Senate of ISU" in *Reynard*.¹⁴ He also highlighted that both groups have a similar composition of members. Additionally, [REDACTED] contended that the Faculty Senate is under the control of the University Council pursuant to Article 7.3 of University Constitution, which provides that "[t]he university bylaws shall specify the membership of the Faculty Senate, its method of selection, and its duties and responsibilities[.]"¹⁵ and therefore that the Faculty Senate is also a subsidiary body subject to OMA. Thus, [REDACTED] distinguished *Pope*, contrasting the informal nature of the entity at issue in that case with the formal organizational roles of the University Council, Faculty Senate, and RSB Committee.

After reviewing both parties' arguments in light of the *Stukel* factors, this office concludes that the RSB Committee is a public body subject to the requirements of OMA. The RSB Committee's duties are defined in the University's bylaws, indicating that the RSB Committee is part of the formal organizational structure of the University—a primary consideration in determining whether it is subject to OMA. In addition, the bylaws specify the RSB Committee's composition and the lengths of its members' terms. The clearly assigned responsibilities, composition, and service periods signify the formality of the RSB Committee.

¹²Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 12.

¹³Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 12.

¹⁴Letter from [REDACTED] to [Assistant Attorney General Teresa] Lim (November 27, 2017), at 2.

¹⁵Constitution of Northern Illinois University, Article 6: Faculties, Standing Committees, Councils and Boards of the Faculty and Administration (last visited June 26, 2018), https://www.niu.edu/u_council/constitution/constitution/page5.shtml#article6.

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Although the RSB Committee does not have investigative powers and while its members do not receive additional compensation, the University acknowledged that the RSB Committee "provide[s] important insight, perspective and knowledge from its membership for proposed budgets and budgeting policy initiatives."¹⁶ The broad duties set forth in the bylaws suggest that the RSB Committee has a considerable deliberative function, offering input on both short- and long-term budget matters affecting the distribution of resources and space to the University's various constituencies.

Further, the RSB Committee is accountable to the University Council and the University's administration. As noted above, its members are appointed with the advice and consent of the University Council and the Faculty Senate, and the University Constitution requires that the RSB Committee report all actions to the University Council. In addition, the University's bylaws provide that the RSB Committee shall "meet with the president and the executive vice president and provost, together and/or separately, at least two times a semester, to offer advice on budget and space issues."¹⁷ The RSB Committee's periodic reporting to the University Council and key University officials indicates that there is significant University oversight of the RSB Committee's activities. Additionally, although the RSB Committee does not have a budget of its own or make binding determinations, the University acknowledges that it makes impactful recommendations. Because OMA defines "public body" to include advisory bodies of a public body, and because the RSB Committee has key characteristics of an advisory body, this office concludes that the RSB Committee is subject to the requirements of OMA.

In a June 1, 2018, e-mail to an Assistant Attorney General Bureau in the Public Access Bureau, the University's Acting Vice President and General Counsel, Mr. Gregory Brady, confirmed that the acting president of the University had announced in December 2017 that the University was working to bring the University Council and its standing committees into compliance with OMA. The announcement explained that "the University would take steps in the spring semester to put mechanisms into place for OMA compliance with the intent to be compliant when the faculty return to the University for the fall semester."¹⁸ According to the

¹⁶Letter from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (November 13, 2017), at 11.

¹⁷Bylaws of Northern Illinois University, Article 2: Standing Committees of the University Council, 2.6 Resources, Space and Budget Committee, 2.6.3 Duties, (last visited June 26, 2018), https://www.niu.edu/u_council/constitution/bylaws/article02.shtml.

¹⁸E-mail from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim (June 1, 2018).


Mr. Gregory Brady

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administrative assistant for the University Council, the RSB Committee has since taken the following steps to comply with OMA:

- Written agendas for each meeting were created.
- Those agendas were then posted online and physically at the building where RSB was meeting.
- RSB took attendance and made sure there was physically present quorum.
- RSB kept written minutes of the meetings and have posted them once approved.
- RSB instituted a public comment section for each meeting.
- [The University Council] and RSB have an approved policy for public comment at its meetings and a registration form for public comment.
- The RSB regular meetings for next year have been approved and posted online.^[19]

Mr. Brady further stated that the University planned to ask all members of the University Council and its standing committees to complete the online OMA training when they reconvened in the fall semester. The measures taken by the University to provide notice of committee meetings, record minutes, and allow an opportunity for public comments indicate that the University is actively working to ensure that the RSB Committee and other standing committees of the University Council comply with OMA's requirements. Accordingly, no further remedial action is warranted.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

¹⁹E-mail from Gregory A. Brady, Acting Vice President and General Counsel, Northern Illinois University, to Teresa Lim (June 1, 2018).

Dr. Michael J. Haji-Sheikh
Mr. Gregory Brady
December 5, 2018
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 5, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 55844

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On November 26, 2018, this office received your Request for Review alleging that the Village of Sherman (Village) Board of Trustees (Board) violated OMA in connection with its November 20, 2018, meeting. Specifically, you alleged that the Board held discussions about a "Play System" for the Village Park without adhering to the requirements of OMA prior to voting to approve a bid for the project at the meeting in question.¹ You contended: "Items appear on the agenda under the President['s] Report for the first time to be voted on when the Village Board has never had Open public discussion on the topic prior to voting on the topic."² You stated that the Play System had not appeared on a meeting agenda since the Board formed a Parks & Recreation Committee (Committee) at its March 6, 2018, meeting; you provided copies of the Board's March 6, 2018, meeting agenda and minutes, the latter of which state that the Committee was established "to begin meetings for the new play system and splash pad for new village park."³ You also directed this office to a video recording of a portion of the Board's November 20, 2018, meeting in which you addressed the Board and Mayor Trevor J. Clatfelter

¹ E-mail from [REDACTED] to IL Attorney General (November 21, 2018).

² E-mail from [REDACTED] to IL Attorney General (November 21, 2018).

³ Sherman Village Board, Meeting, March 6, 2018, Minutes 2.

December 5, 2018

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responded.⁴ With regard to the recording, you asserted: "Following my comments, Mayor Clatfelter[] explains how they can conduct business on an individual basis with staff. Basically they are conducting Public Business and having discussions without doing it in an Open Meeting, just skirting the law."⁵ Additionally, you questioned the timing of the public comment portions of Board meetings, asserting that "the Public never has an opportunity to question the actions of their Village Board before items are already vote[d] on because the Public Comment period is just before the adjournment and things are always voted on prior to that."⁶ Furthermore, you alleged that "at NO time did [the Board] mention the amount of the bid" prior to voting to accept a bid for the Play System. (Emphasis in original.)⁷

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "meeting" subject to the Act as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of **a majority of a quorum of the members of a public body** held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. (Emphasis added.)

If a majority of a quorum is not present, a gathering of the members of a public body is not a "meeting" subject to OMA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39202 39269 39270, issued February 4, 2016, at 2 (public hearing was not a meeting subject to OMA because only one member of the public body attended); Ill. Att'y Gen. PAC Req. Rev. Ltr. 40963, issued April 4, 2016, at 2 ("OMA governs the transparency with which *public bodies* conduct public business; OMA does not govern the unilateral actions of one Board member outside of an open meeting, such as one Board member's communications with non-Board members." (Emphasis in original.)).

⁴Sherman IL411, 2018 11 20 Conducting Village business without a Public Meeting, YouTube (Nov. 20, 2018), <https://www.youtube.com/watch?v=-HifwIVbKVo>.

⁵E-mail from [REDACTED] to IL Attorney General (November 21, 2018).

⁶E-mail from [REDACTED] to IL Attorney General (November 21, 2018).

⁷E-mail from [REDACTED] to IL Attorney General (November 21, 2018).

This office has reviewed the video recording you referenced, which depicts a portion of the Board's November 20, 2018, meeting. The recording reflects that you stepped up to a podium and inquired about any discussions that the Board had held prior to its vote on the bid for the Play System. You noted that the Village's website stated that its staff would work closely with members of the Committee, Sherman elementary, and the community as part of a park equipment selection process. Additionally, you noted that there had been no public meetings about the park or selection process. Mayor Clatfelter responded by confirming that there had been no Board meetings regarding the Play System; he acknowledged that the Village administrator had engaged in discussions concerning the selection process, but explained that any communications between the Village's administration and trustees were on an individual basis.

Your Request for Review has not alleged facts sufficient to demonstrate that the Committee or the Board held any meetings about the Play System without adhering to the requirements of OMA.⁸ Although the Board's March 6, 2018, meeting minutes suggest that the Committee was to hold meetings regarding the Play System, it appears that discussions concerning possible vendors consisted of communications between Village staff and individual Board members. As discussed above, OMA requires a majority of a quorum of a public body's members to be engaged in "contemporaneous interactive communication" in order for their communications to potentially constitute a "meeting" subject to the requirements of OMA. While you contend that individual communications with trustees circumvent OMA's requirements on conducting public business in open meetings, OMA generally does not prohibit individual members of a public body from communicating with staff about matters of public business.⁹ Because your Request for Review does not set forth facts indicating that a majority of a quorum of the trustees engaged in contemporaneous interactive communications concerning the Play System outside of an open meeting, no further action is warranted as to your claim that the Board improperly conducted public business on that topic in private.

As to your complaint about the timing of public comments, section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Under the plain language of section 2.06(g), a public body must provide an opportunity for public comment at each meeting, subject to the rules established and recorded by the public

⁸Under section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)), a Request for Review "must include a summary of the facts supporting the allegation."

⁹This office has previously determined that a public body violated the spirit and intent of OMA by maneuvering its members in and out of a private gathering in order to avoid having contemporaneous interactive communications among a majority of a quorum. Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, issued August 12, 2011, at 5. The information you have presented does not indicate that the Board employed a similar scheme in violation of the spirit or intent of OMA.


December 5, 2018

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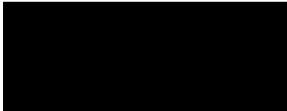
body. This office has previously determined that "[t]his provision does not, however, require a public body to hold public comment at any particular point in a meeting, provided that its rules do not otherwise specify." Ill. Att'y Gen. PAC Req. Rev. Ltr. 37876, issued March 31, 2016, at 3. Further, this office has previously determined that the right to comment during an open meeting includes the right to ask questions of public officials, notwithstanding that OMA does not require public officials to respond to questions or comments. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2. Therefore, OMA did not require the Board to provide an opportunity for members of the public to address or question the Board about the bid prior to its vote of approval.

Lastly, as to your allegation that the Board did not state the amount of the bid prior to its vote, section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) provides: "Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." In *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶64, 77 N.E.3d 625, 636 (2017), the Illinois Supreme Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance."

In this instance, to the extent that the Board did not publicly state the amount of the bid prior to its vote of approval during its October 22, 2018, meeting, it does not appear that reciting the amount of the bid was necessary to announce the nature of the matter under consideration or identify the particular transaction at issue. Accordingly, this office has determined that no further action is warranted.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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December 5, 2018

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cc: *Via electronic mail*
The Honorable Trevor J. Clatfelter
Mayor/President
Village of Sherman
Sherman Village Hall
401 St. John's Drive
Sherman, Illinois 62684
tclatfelter@shermanil.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018

[REDACTED]

RE: OMA Request for Review – 2012 PAC 22605

Dear [REDACTED]

The Public Access Bureau received your Request for Review alleging that the Wilmington School District 209 Board of Education (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) on December 12, 2012. In a December 7, 2018, telephone conversation with a staff member in the Public Access Bureau, you expressed that this Request for Review should be closed because the matter has been resolved. Accordingly, this file is closed. If you have any questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,

[REDACTED]

JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau

22605 o inf r sd

cc: Mr. Timothy Cragg
President, Board of Education
Wilmington Community Unit School District 209 U
209 Wildcat Court
Wilmington, Illinois 60481



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018

[REDACTED]

Re: OMA Requests for Review – 2013 PAC 23095; 2013 PAC 23359

Dear [REDACTED]

You submitted the above-captioned Requests for Review alleging that the Two Rivers Regional Council of Public Officials violated the Open Meetings Act (OMA) (5 ILCS 120/1 et seq. (West 2012)). On December 10, 2018, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you advised this office that you no longer wished to pursue the above-captioned Requests for Review. Accordingly, this letter shall close these matters. If you have any questions, please contact me at 312-814-5201.

[REDACTED]
Very truly yours, [REDACTED]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau [REDACTED]

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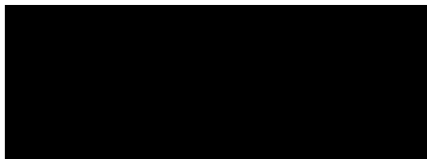
cc: Mr. Michael McLaughlin
Executive Director
Two Rivers Regional Council of Public Officials
107 North Third Street
Quincy, Illinois 62301



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018



RE: OMA Request for Review – 2013 PAC 23226

Dear [REDACTED]

The Public Access Bureau received your Request for Review alleging that the South Highway Water District Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) on December 19, 2012. In a telephone conversation today, with a staff member in the Public Access Bureau, you expressed that this Request for Review should be closed because the matter has been resolved. Accordingly, this file is closed. If you have any questions, please contact me at (312) 814-5383 or smukherjee@atg.state.il.us.

Very truly yours,



S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

23226 o inf mun

cc: District Manager
South Highway Water District
111 Cedar Creek Road
Makanda, Illinois 62958



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018



RE: OMA Request for Review – 2013 PAC 23686

Dear [REDACTED]

The Public Access Bureau received your Request for Review alleging that the Byron Park District Board violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) on January 15, 2013, and February 6, 2013. In a telephone conversation today with a staff member in the Public Access Bureau, you expressed that this Request for Review should be closed because the matter has been resolved. Accordingly, this file is closed. If you have any questions, please contact me at (312) 814-8413 or jjones@atg.state.il.us.

Very truly yours,



JOSHUA JONES
Deputy Bureau Chief
Public Access Bureau

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cc: Mr. Scott Jeffrey
President, Board of Commissioners
Byron Park District
420 North Colfax Street
Byron, Illinois 61010



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018

Via electronic mail

P.O. Box 26
Littleton, Illinois 61452

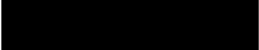
RE: OMA Request for Review – 2018 PAC 55991

Dear [REDACTED]

The Public Access Bureau has received your Request for Review, dated December 6, 2018, in which you allege that the Littleton Township Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)). Specifically, you object to the Board's refusal during its November 12, 2018, meeting to provide a member of the public with a copy of a document that the individual requested during the Board meeting.

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation."

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public *to address public officials at open meetings.*" (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. The plain language of section 2.06(g) of OMA contemplates the opportunity for citizens to express their views to members of a public body, but OMA does not require any response by or answers from public officials. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7. While OMA requires members of the public

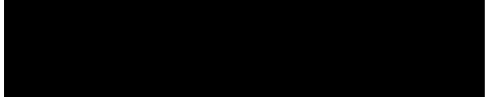

December 10, 2018

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to be able to ask questions, including to ask for copies of records, OMA does not require a public body to answer questions or, in this instance, to provide copies of records. This office notes that a public body is required to respond to all written FOIA requests,¹ but your Request for Review did not allege that the Board failed to respond to a FOIA request for the records at issue.

Accordingly, this office will take no further action in this matter, and this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter or at (217) 524-7958.

Very truly yours,


LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

55991 o no fi war mun

cc: The Honorable Jacqueline Goddard
Supervisor
Littleton Township Board of Trustees
P.O. Box 132
Littleton, Illinois 61452

¹See 5 ILCS 140/3 (West 2016).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 10, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 56000

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Village of Rossville's Board of Trustees (Board) violated OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

Your December 6, 2018, Request for Review alleged that the Board violated OMA by: (1) failing to post on its website notice of its December 6, 2018, meeting at least 48 hours in advance of that meeting; and (2) failing to post on its website the minutes of its October 2018 meeting within 10 days after approving those minutes during its November 2018 meeting.

Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) provides that "a public body that has a website that *the full-time staff of the public body maintains* shall post notice on its website of all meetings of the governing body of the public body." (Emphasis added.) Similarly, section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides that "a public body that has a website that *the full-time staff of the public body maintains* shall post the


December 10, 2018


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minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body." (Emphasis added.) Under the plain language of these provisions, if a public body's website is not maintained by full time staff, the public body is not obligated to post meeting notices or minutes on its website.

On December 10, 2018, an Assistant Attorney General in the Public Access Bureau spoke by telephone with the Village Clerk, Ms. Chris White, who confirmed that a part-time staff member typically maintains the Village's website. Therefore, the Board is not required to post meeting notices or minutes on the Village's website for as long as that remains the case. This office notes that the October 2018 meeting minutes are, nonetheless, posted on the Village's website. Further, the Board is still required to post paper notices of its meetings under section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) and make its minutes available for public inspection within 10 days after approving them under section 2.06(b) of the Act. Because the Board did not violate the website posting requirements of OMA under these circumstances, this Request for Review is unfounded.

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Richard Queen
Mayor, Village of Rossville
120 East Attica
Rossville, Illinois 60963
mayor@villageofrossville.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 11, 2018

Via electronic mail



Re: FOIA Request for Review – 2013 PAC 23312

Dear [REDACTED]

You submitted the above-captioned Request for Review alleging that the Board of Trustees of Waubonsee Community College violated the Open Meetings Act (OMA) (5 ILCS 120/1 et seq. (West 2012)). On December 10, 2018, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you advised this office that you no longer wished to pursue the above-captioned Request for Review. Accordingly, this letter shall close this matter. If you have any questions, please contact me at 312-814-5201.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau
[REDACTED]

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cc: *Via electronic mail*
Mr. David Quillen
Executive Vice President of Finance and Operations
Waubonsee Community College
Route 47 at Waubonsee Drive
Sugar Grove, Illinois 60554
dquillen@waubonsee.edu



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 13, 2018

Via electronic mail

Via electronic mail

Mr. Jeffrey R. Jurgens, Corporation Counsel
City of Bloomington
legal@cityblm.org

RE: OMA Request for Review – 2012 PAC 20115

Dear [REDACTED] and Mr. Jurgens:

On June 13, 2012, this office received [REDACTED] Request for Review alleging that the City of Bloomington (City) Citizens Beautification Committee (Committee) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2012)). [REDACTED] alleged that the Committee violated OMA by failing to provide public notice and an agenda for a meeting held on April 18, 2012.

On June 27, 2012, this office forwarded the Request for Review to the City and asked it to address [REDACTED] allegations. On July 18, 2012, the City responded by explaining that no meeting matching the description in [REDACTED] Request for Review occurred on April 18, 2012, but on April 23, 2012, a gathering regarding a proposed gateway project occurred that involved "eight representatives from various organizations and businesses in the Bloomington community,"¹ "Mayor Stephen Stockton, two members of the Citizen's Beautification Committee, and three city employees."² The City asserted that the gathering was not a meeting

¹Letter from Rosalee Dodson, Assistant Corporation Counsel, to Lindsay LaVine, Assistant Attorney General (July 18, 2012), at 2; letter from Rosalee Dodson, Assistant Corporation Counsel, to Lindsay LaVine, Assistant Attorney General (July 18, 2012), at 2.

²Letter from Rosalee Dodson, Assistant Corporation Counsel, to Lindsay LaVine, Assistant Attorney General (July 18, 2012), at 2; letter from Rosalee Dodson, Assistant Corporation Counsel, to Lindsay LaVine, Assistant Attorney General (July 18, 2012), at 2.

██████████
Mr. Jeffrey R. Jurgens
December 13, 2018
Page 2


subject to the requirements of OMA because it was not a meeting of the City Council or of the Committee.

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) provides that "[a]ll **meetings** of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." (Emphasis added.) In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA:

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

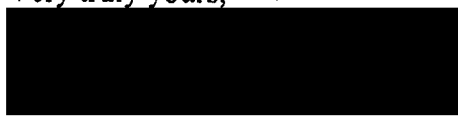
The Committee is comprised of twelve members. Accordingly, seven Committee members constitute a quorum, and a majority of the quorum is four members. Therefore, when at least four members of the Committee engage in contemporaneous, interactive communications concerning Committee business, those discussions may constitute Committee meetings subject to the procedural safeguards and requirements of OMA. The City explained that only two members of the Committee attended the April 23, 2012, gathering. Therefore, because a majority of a quorum was not present at the April 23, 2012, gathering, this office is unable to conclude that any discussion between these individuals constituted a "meeting" of the Committee subject to the requirements of OMA.

██████████ also appears to allege that members of the Council should have been invited to the April 23, 2012, gathering. The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). OMA does not contain any provisions that are relevant to ██████████ claim. Accordingly, this office cannot conclude that the City violated any provision of OMA in connection with this allegation.


Mr. Jeffrey R. Jurgens
December 13, 2018
Page 3

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 13, 2018

Via electronic mail

The Honorable Raymond A. Lopez
Alderman, 15th Ward
City Council of the City of Chicago
121 North LaSalle Street, Room 300
Chicago, Illinois 60602
raymondlopez@the15thward.org

RE: OMA Request for Review – 2018 PAC 56006

Dear Alderman Lopez:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the City of Chicago City Council's Committee on Housing and Real Estate (Committee) violated OMA in connection with its December 6, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

In your Request for Review, you stated that during the Committee's December 6, 2018, meeting, the first of the three items on the agenda purportedly passed with a unanimous voice vote despite the presence of just three of the Committee's 15 members. You further stated that after you made a "quorum call," the Committee Chairman, the Honorable Joseph Moore, immediately called for a recess, and that the gathering reconvened without addressing the


The Honorable Raymond A. Lopez
December 13, 2018
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quorum call.¹ Ten aldermen had arrived by that time, you stated, but only six of them were Committee members. You asserted that the Committee proceeded to take official votes on the final two items on the agenda despite lacking a quorum, alleging that "this is a violation of the law as well as of the City Council's own governing rules."²

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Accordingly, the Public Access Bureau does not have the authority to review the Committee's adherence to the City Council's rules or to statutory provisions other than those found in OMA and FOIA. OMA governs the transparency with which public bodies meet and conduct public business; it generally does not govern other aspects of meetings, including the number of members of the Committee who must be present to form a quorum and take action. The requirement in section 7(a) of OMA (5 ILCS 120/7(a) (West 2017 Supp.)) that a quorum be physically present addresses circumstances under which a member of a public body may be permitted to attend a meeting by audio or video conference. Ill. Att'y Gen. PAC Req. Rev. Ltr. 48860 and 49185, issued December 7, 2017) (concluding that the requirement in section 2.01 of OMA (5 ILCS 120/2.01 (West 2017 Supp.)) that a quorum of members of a public body be physically present pertains to instances involving remote participation). (Copy attached.) Your Request for Review does not allege that any members of the Committee attended its December 6, 2018, meeting by audio or video conference. This is not to say that meeting and taking action without a quorum of the members of a public body is proper; rather, those quorum requirements are determined by the City Council's governing rules and statutes, instead of OMA. Accordingly, the Public Access Bureau lacks the authority to take further action with respect to your allegations.

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address at the bottom of the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

¹Letter from Raymond A. Lopez, Alderman – 15th Ward of Chicago, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (December 7, 2018), at 1.

²Letter from Raymond A. Lopez, Alderman – 15th Ward of Chicago, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (December 7, 2018), at 2.

The Honorable Raymond A. Lopez
December 13, 2018
Page 3

56006 o no fi war mun

Attachment

cc: The Honorable Joseph A. Moore
Chairman, Committee on Housing and Real Estate
City Council of the City of Chicago
121 North LaSalle Street, Room 300
Chicago, Illinois 60602



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 7, 2017

Via electronic mail




Via electronic mail

Mr. Christopher L. Petrarca
Hauser Izzo, LLC
1415 West 22nd Street, Suite 200
Oak Brook, Illinois 60523
cpetrarca@hauserizzo.com

Via electronic mail

The Honorable Randy Alexander
President, Board of Education
Rich Township High School District No. 227
20550 South Cicero
Matteson, Illinois 60443
ralexander@rich227.org

RE: OMA Requests for Review – 2017 PAC 48860; 2017 PAC 49185

Dear  Mr. Petrarca, and Mr. Alexander:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). This office has consolidated these Requests for Review because they contain closely-related allegations concerning the same meetings. For the reasons discussed below, the Public Access Bureau is unable to conclude that the special meetings of certain members of the Rich Township High School District No. 227 Board of Education (Board) on July 15, 2017, July 18, 2017, and July 22, 2017, violated the requirements of OMA.

██████████
Mr. Christopher L. Petrarca
The Honorable Randy Alexander
December 7, 2017
Page 2

On July 24, 2017, ██████████ submitted this Request for Review alleging that a majority of a quorum of Board members held improper meetings on July 15, 2017, and July 18, 2017, because a quorum¹ of Board members was not physically present at the meeting location. Additionally, on July 28, 2017, the Board's legal counsel, Mr. Christopher L. Petrarca, submitted a letter to the Public Access Bureau self-reporting these same alleged violations. Mr. Petrarca confirmed that three Board members, which constituted a majority of a quorum of Board members, convened meetings to discuss public business on those two dates, and added that it did the same on July 22, 2017.

On August 3, 2017, this office sent a copy of ██████████ Request for Review to the Board and asked it to respond to her allegations, together with copies of the notices, agendas, and minutes for the meetings in question. On August 7, 2017, Mr. Petrarca furnished agendas for the July 15, 2017, July 18, 2017, and July 22, 2017, meetings, and a written response referencing his July 28, 2017, letter to this office. The information submitted indicated that notice and an agenda were posted for each of these meetings, and the public had the opportunity to attend and address the Board members who were present. ██████████ did not submit a reply

DETERMINATION

In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)):

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a **majority of a quorum of the members of a public body** held for the purpose of discussing public business[.] (Emphasis added.)

The first sentence of the second paragraph of section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) further provides that "[a] quorum of members of a public body must be physically present at the location of an open meeting." As detailed below, the remainder of this provision addresses how a quorum is calculated for certain public bodies that hold meetings through interactive video conferences, and the requirement that a quorum of other types of public bodies must be physically present at the meeting location in order to allow additional members of those public

¹ ██████████ specifically alleged that four Board members would have constituted a quorum under the requirements of section 10-12 the School Code (105 ILCS 5/10-12 (West 2016)) ("A majority of the full membership of the board of education shall constitute a quorum.")).

Mr. Christopher L. Petrarca
The Honorable Randy Alexander
December 7, 2017
Page 3

bodies to participate through audio or video conference. Reading section 2.01 in its entirety, it is unclear whether the sentence requiring a quorum of members to be "physically present at the location of an open meeting[]" is intended to apply to all meetings of public bodies, or only those in which members participate by audio or video conferences. Therefore, the meaning of that sentence is ambiguous.

"In determining the meaning of a statute, a court will not read language in isolation, but must consider it in the context of the entire statute." *Slepicka v. Illinois Dept. of Public Health*, 2014 IL 116927, ¶14, 21 N.E.3d 368, 373 (2014). When the meaning of statutory language is ambiguous, a reviewing body may consider the statute's purpose, the policy considerations that led to its passage, and "the statute's context, reading the provision at issue in light of the entire section in which it appears and the Act of which that section is a part." *In re Marriage of Mathis*, 2012 IL 113496, ¶20, 986 N.E.2d 1139, 1144-45 (2012).

The provision that "[a] quorum of members of a public body must be physically present at the location of an open meeting" was added to section 2.01 of OMA by Public Act 94-1058, effective January 1, 2007. Prior to the passage of Public Act 94-1058, the following language constituted the entirety of section 2.01 of OMA: "**All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public. No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.**" (Emphasis added.) Public Act 94-1058 added the following language to section 2.01 as the second and third paragraphs:

A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (except one with jurisdiction limited to a specific geographic area that is less than statewide) is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. * * * The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.

Mr. Christopher L. Petrarca
The Honorable Randy Alexander
December 7, 2017
Page 4

A quorum of members of a public body that is not a public body with statewide jurisdiction must be physically present at the location of a closed meeting. Other members who are not physically present at a closed meeting of such a public body may participate in the meeting by means of a video or audio conference.


Public Act 94-1058 also added section 7 to OMA (5 ILCS 120/7 (West 2006)). Section 7 sets forth the rules governing remote meeting attendance by members who are unable to be physically present at the meeting location. Moreover, Public Act 94-1058 expanded the definition of "meeting" in section 1.02 of OMA (5 ILCS 120/1.02 (West 2006)) to include gatherings that occur "by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication[.]"

Accordingly, in the context of section 2.01 of OMA and the statute as a whole, the requirement that a quorum be physically present is tied to circumstances in which one or more members participate in the meeting despite not being physically present at the meeting location.

The legislative history behind Public Act 94-1058 provides further support for the conclusion that the language "[a] quorum of members of a public body must be physically present at the location of an open meeting[]" pertains to instances involving remote participation. During the House debate on Senate Bill No. 585, which added that language to OMA as part of Public Act 94-1058, House sponsor Robert F. Flider explained the legislation as follows:

What this legislation does is it updates [OMA] and specifies rules with regard to electronic communications. It expands the definition of a 'meeting' to include the presence whether by telephone calls, video or audio conference, or other electronic means. And it also specifies that a quorum of members of a public body must be physically present at an open meeting *in the case of electronic communications*. * * * The bottom line of this is that it updates the Open Meetings Act to deal with electronic communications. *It does not change whatsoever the quorum requirements of [OMA].*" (Emphasis added.) Remarks of Rep. Flider, May 1, 2006, House Debate on Senate Bill No. 585, at 9.

Therefore, Representative Flider clarified that the requirement that a quorum be "physically present" pertains only to instances involving electronic meeting participation.



Mr. Christopher L. Petrarca
The Honorable Randy Alexander
December 7, 2017
Page 5

In this instance, the Requests for Review solely asserted that the Board violated section 2.01 of OMA by holding meetings without having a quorum physically present, and the Board has acknowledged that a majority of a quorum, not a full quorum, of Board members gathered to discuss public business on those dates. Because there is no indication that Board members participated in those meetings by audio or video conference, the requirement in section 2.01 of OMA that a quorum of the members of the public body be "physically present" is inapplicable here. In addition, the Board members complied with OMA's requirements for advance notice and the opportunity for the public to attend when a majority of a quorum of a public body gather to discuss public business. Accordingly, this office is unable to conclude that the Board violated OMA in connection with the three meetings in question.

This determination, however, cannot be construed as approval of the Board's meetings conducted without a quorum of members of the public body present, nor does it address the ability of just a majority of a quorum, as opposed to a full quorum, even to discuss issues. Rather, this office's determination is limited to interpreting the requirements of OMA. *See* 15 ILCS 205/7 *et seq.* (West 2016). The quorum requirements for the Board are set by its formal policies, the School Code, and rules of parliamentary procedure. Similarly, other public bodies may formulate requirements with respect to quorum requirements and meeting attendance. OMA is silent on quorum requirements except for the circumstances described above.

The Public Access Counselor had determined that resolution of these matters does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter. This letter serves to close these matters.

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 14, 2018

Via electronic mail

[REDACTED]

Via electronic mail

Mr. John M. Redlingshafer
Mescher Law Offices, P.C.
108 South Wood Street
Washington, Illinois 61571
jredlingshafer@mescherlaw.com

RE: OMA Request for Review – 2018 PAC 54879

Dear [REDACTED] and Mr. Redlingshafer:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Littleton Township (Township) Board of Trustees (Board) did not hold a meeting subject to the requirements of OMA on July 18, 2018.

On September 15, 2018, [REDACTED] submitted this Request for Review alleging that a quorum of the Board attended the Greater West Central Public Library District (Library) public meeting on July 18, 2018. [REDACTED] Request for Review stated that the Library's agenda for this meeting listed a discussion concerning an intergovernmental agreement between the Township and the Library, and that during this meeting, the Township's supervisor indicated that she and the two other present Board members held a discussion about this matter while traveling together to the Library's meeting.

This office construed [REDACTED] Request for Review as alleging that the discussion within the vehicle by certain Board members was subject to the requirements of OMA because it constituted a "meeting" of the Board as defined in section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)).

██████████
Mr. John M. Redlingshafer
December 14, 2018
Page 2

On September 25, 2018, this office sent a copy of the Request for Review to the Board and asked for a written response to ██████████ allegation. On October 5, 2018, the Board's counsel provided the requested written response. Later that day, this office forwarded the Board's response to ██████████ and he also replied on October 5, 2018. On October 10, 2018, ██████████ submitted a second reply.¹ On October 17, 2018, the Board provided this office with a supplemental reply, in response to ██████████ October 10, 2018, reply.

DETERMINATION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) provides that "[a]ll **meetings** of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." (Emphasis added.) In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA:

"Meeting" means any **gathering**, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, **for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.**

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required. (Emphasis added.)

Here, the Board is a 5-member public body comprised of the Township supervisor and four trustees. See 60 ILCS 1/80-5(a) (West 2016). Accordingly, under the above-cited statutory definition of a "meeting," when at least three **members of the Board** engage in contemporaneous, interactive communications concerning Township business, those discussions may constitute Board meetings subject to the procedural safeguards and requirements of OMA.

¹In his October 5, 2018, and October 10, 2018, replies, ██████████ alleges additional OMA violations concerning a July 9, 2018, Board meeting. These allegations, however, were not raised in ██████████ Request for Review, and therefore, are not considered within this determination.

[REDACTED]
Mr. John M. Redlingshafer
December 14, 2018
Page 3

The Township clerk, however, is not a member of Board, and is entitled to cast a vote in only one specific scenario which is not at issue in this matter.² See 60 ILCS 1/80-5(a) (West 2016) ("The township clerk shall be the clerk of the township board but not a voting member, except that in the case of a tie vote to fill a vacancy in a township office, the clerk shall be entitled to cast one vote."). Under these circumstances, a gathering of the Township supervisor, the Township clerk, and one trustee of the Board does not constitute a quorum of the Board. Therefore, this office is unable to conclude that any discussion between these three individuals concerning Township business while traveling to the Library's July 18, 2018, meeting constituted a "meeting" of the Board subject to the requirements of OMA.³

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

54879 o 2a meeting proper mun

²In his reply [REDACTED] questioned whether the Township clerk may attend the Board's closed session discussions if the clerk is not a member of the Board. The Public Access Bureau has previously determined that OMA does not prohibit a public body from permitting non-members to attend closed session discussions. Ill. Att'y Gen. PAC Req. Rev. Ltr. 35792, issued June 22, 2015.

³This office's review of the minutes of the Library's July 18, 2018, meeting confirms that no additional members of the Board attended and engaged in the discussion of Township business during this meeting of the Library. However, this office reminds the members of Board to be mindful of the requirements of OMA even when attending the public meeting of another public body. If a second trustee of the Board had attended the Library's meeting and engaged in deliberative discussions of Township business, those discussions potentially could have constituted a Board meeting.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 14, 2018

Via electronic mail

Via electronic mail

Mr. John M. Redlingshafer
Mescher Law Offices, P.C.
108 South Wood Street
Washington, Illinois 61571
jredlingshafer@mescherlaw.com

RE: OMA Request for Review – 2018 PAC 55075

Dear [REDACTED] and Mr. Redlingshafer:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Littleton Township (Township) Board of Trustees (Board) did not violate OMA in connection with the Board's August 20, 2018, special meeting. However, this office further concludes that certain members of the Board failed to timely complete the mandatory electronic OMA training.

On October 2, 2018, this office received [REDACTED] completed Request for Review alleging that the Board violated OMA during its August 20, 2018, meeting by attempting to discuss topics in closed session that are not within the scope of the exceptions to the general requirement that public bodies conduct public business openly. Specifically [REDACTED] asserted that the Board improperly attempted to discuss in closed session an intergovernmental agreement between the Board and the Greater West Central Public Library (Library) under section 2(c)(6) of OMA (5 ILCS 120/2(c)(6) (West 2017 Supp.)), as amended by Public Act 100-646, effective July 31, 2018), which permits a public body to hold a closed session to discuss "[t]he setting of a

Mr. John M. Redlingshafer

December 14, 2018

Page 2

price for sale or lease of property owned by the public body."¹ [REDACTED] asserted that the Board's basis for going into closed session was inapplicable because the Board Supervisor had indicated that the Board did not intend to lease its building to the Library. [REDACTED] also alleged that certain Board members did not timely complete the OMA training as required by section 1.05(b) of OMA (5 ILCS 120/1.05(b) (West 2016)).²

On October 10, 2018, this office sent a copy of the Request for Review to the Board and asked for a written response to [REDACTED] allegations. On October 22, 2018, the Board's counsel provided a written response. On October 23, 2018, this office forwarded the Board's response to [REDACTED] he did not reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). For that reason, section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a."

Closed Session Discussion

As mentioned above, [REDACTED] Request for Review asserted that the Board improperly discussed in closed session an intergovernmental agreement between the Board and Library during the Board's August 20, 2018, special meeting. The Board stated in its answer to this office, however, that there was no closed session at that meeting. Specifically, the Board stated:

¹The agenda for the Board's August 20, 2018, special meeting lists "Special Meeting to discuss price for Intergovernmental agreement lease 5ILCS120-2 26" (Littleton Township Board of Trustees, Meeting, Agenda Item 2 (August 20, 2018)), which this office construes as a citation to section 5 ILCS 120/2(c)(6) of OMA.

²In his Request for Review, [REDACTED] questioned whether Board Trustee Grafton could record a public meeting on her personal device. Although section 2.06(a) (5 ILCS 120/2.06(a) (West 2016)) requires a public body to maintain "a verbatim record of all their closed meetings in the form of an audio or video recording[.]" no provision of OMA requires that a public body record its open session meetings, nor does OMA prohibit a member of a public body from recording an open session meeting on his or her personal device. However, because a recording of an open public meeting would clearly pertain to the public business of the Township, such a recording by a public board member – even on a personal device – would be subject to the requirements of the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶31, 992 N.E.2d 629, 637 (10th ed. 2000)).

On August 20, 2018, as the Township Board reached the portion of its agenda to go into closed session, [REDACTED] vocally objected to and questioned the Board's ability to do so. * * * In an effort to maintain decorum and civility, the Board answered various questions from [REDACTED] about the proposed action, and [REDACTED] refused to leave the meeting room. * * * After determining [REDACTED] was not going to allow the meeting to proceed (in either open or closed session), Supervisor Goddard adjourned the meeting.^[3]

The minutes provided by the Board of its August 20, 2018, special meeting confirm this account.

Because the available information indicates that no closed session discussion occurred, there is no basis for this office to conclude that the Board violated section 2(a) of OMA by discussing an unauthorized topic in closed session during its August 20, 2018, special meeting.

OMA Training

Section 1.05(b) of OMA provides the requirements for elected or appointed members of public bodies to complete the electronic training program developed by the Public Access Counselor:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed **not later than the 90th day after the date the member:**

- (1) **takes the oath of office**, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or

³Letter from John M. Redlingshafer, Mescher Law Offices, P.C. to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (October 22, 2018), at 1-2.

- (2) **otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.**

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

* * *

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body.

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).
(Emphasis added.)

In his Request for Review ██████████ alleged that the Township's supervisor and Board Trustees Rebman and Woodside failed to complete their OMA training within 90 days of taking their oaths of office or being appointed. The Board does not dispute those allegations.

[REDACTED]
Mr. John M. Redlingshafer
December 14, 2018
Page 5

Therefore, this office concludes that the Township's supervisor and Trustees Rebman and Woodside failed to comply with the training requirements of OMA.⁴

However, along with his Request for Review, [REDACTED] furnished this office with copies of the certificates of completion reflecting that all of these individuals have now successfully completed the OMA electronic training. Therefore, because the supervisor and trustees in question have now successfully completed the OMA electronic training and because the plain language of section 1.05(b) provides that any violation of the training requirements does not invalidate any action taken by the Board, no further remedial action is required. However, this office cautions the Board members to comply with all of the training requirements of OMA in the future.


The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

[REDACTED] also alleged that the Township clerk failed to take the OMA training within 90 days of being elected. This office determined in a separate Request for Review submitted by [REDACTED] that the Township clerk is not a member of the Board. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 54879, issued December 11, 2018, at 3. Accordingly, the clerk is not subject to the training requirements of section 1.05(b) of OMA. However, if the clerk is the Board's OMA designee, then he is subject to the annual training requirements of section 1.05(a) of OMA (5 ILCS 120/1.05(a) (West 2016)), which provides:

Every public body shall designate employees, officers, or members to receive training on compliance with this Act. Each public body shall submit a list of designated employees, officers, or members to the Public Access Counselor. Within 6 months after the effective date of this amendatory Act of the 96th General Assembly, the designated employees, officers, and members must successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program. Thereafter, whenever a public body designates an additional employee, officer, or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.


Mr. John M. Redlingshafer
December 14, 2018
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 17, 2018

Via electronic mail
Mr. Conan E. King
Jefferson Fire Protection District
[REDACTED]

Mr. David Leggans
Howard, Leggans, Piercy & Howard, LLP
1008 Main, P.O. Box 1810
Mt. Vernon, Illinois 62864

RE: OMA Request for Review – 2014 PAC 29140

Dear Mr. King and Mr. Leggans:

On April 28, 2014, the Public Access Bureau received a Request for Review pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2014)) from Mr. Conan E. King alleging that the Jefferson Fire Protection District violated OMA at its April 24, 2014, special meeting. On December 17, 2018, Mr. King advised this office by telephone that he wished to withdraw this Request for Review.

Accordingly, this letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address below.

Very truly yours,
[REDACTED]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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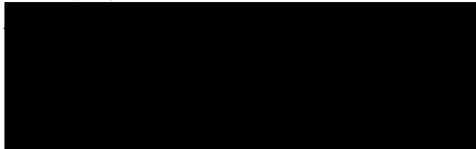


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2018

Via electronic mail



RE: OMA Request for Review – 2014 PAC 29768

Dear [REDACTED]


On June 9, 2014, you submitted a Request for Review to the Public Access Bureau under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5 (a) (West 2016)), alleging that the McHenry County Mental Health Board (Board) violated OMA. On November 24, 2018, this office sent you an e-mail inquiring as to whether you were still interested in obtaining the Public Access Counselor's determination on this matter and indicating that we would take no further action unless we received a response by December 14, 2018. As of today, this office has not received a response to the November 24, 2018, e-mail, and therefore assume you are no longer interested in a review of whether the Board improperly discussed the elimination of your position in closed session during its April 22, 2014, meeting. Accordingly, this letter serves to close this file. If you have any questions, you may contact me by e-mail at sbarnaby@atg.state.il.us.

Very truly yours,



SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

29768 o wdrawn county


December 18, 2018

Page 2

cc: Ms. Connie Meschini
President
McHenry County Mental Health Board
620 Dakota Street
Crystal Lake, Illinois 60012



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2018

Via electronic mail



Via electronic mail

The Honorable Karen Donnelly
LaSalle County State's Attorney
LaSalle County Governmental Complex
707 Etna Road Room 251
Ottawa, Illinois 61350
donnelly@lasallecounty.com

RE: OMA Request for Review – 2014 PAC 32888

Dear [REDACTED] and Ms. Donnelly:

On December 28, 2014, this office received [REDACTED] Request for Review alleging that the LaSalle County (County) Board (Board) did not provide sufficient advanced notice of its December 29, 2014, meeting as required by sections 2.02(a) and 2.02(c) of the Open Meetings Act (OMA) (5 ILCS 120/2.02(a), (c) (West 2014)). In particular, [REDACTED] alleged that the agenda for the December 29, 2014, meeting was not posted on the County's website 48 hours before the meeting and that the agenda was not continuously available for public review at the location of the meeting because the building in which the agenda was posted was locked.

Section 2.02(a) of OMA states "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(a) of OMA also requires that a copy of the agenda must also be posted on the public body's website if the website is maintained by the full-time staff of the public body. "The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is

[REDACTED]
The Honorable Karen Donnelly

December 18, 2018

Page 2

continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c)." 5 ILCS 120/2.02(c) (West 2014).

On January 8, 2015, this office forwarded a copy of the Request for Review to the Board and asked it to respond to [REDACTED] allegations. On January 29, 2015, counsel for the Board responded by providing an affidavit of the Assistant Director of Information Technology and Webmaster for the County that stated the agenda for the December 29, 2014, meeting was posted on the County's website on December 26, 2014. The affidavit also included a document indicating the precise time that the agenda had been posted on that date. In its reply, the Board stated that the agenda was also physically posted at the Criminal Justice building and the LaSalle County Governmental Complex. The Board stated that in the future it would post agendas on the outside doors of the buildings.

Because the Board has provided documentation showing that the agenda for the December 29, 2014, meeting was posted on the County's website and at the location of the meeting at least 48 hours before the meeting and because section 2.02(c) states that posting of the agenda on the public body's website satisfies the continuous posting requirement in OMA, this office concludes that the Board did not violate sections 2.02(a) and 2.02(c) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2018

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55892


Dear [REDACTED]

The Public Access Bureau has received your Request for Review, dated November 27, 2018, in which you allege that the Frankfort Community Unit School District No. 168 (School District) Board of Education (Board) violated the Open Meetings Act (OMA) (5 ILCS 1 *et seq.* (West 2016)). Specifically, you allege that the Board failed to post notice of a special meeting concerning the release of student records. Our review of the information you have furnished, however, provides no basis for this office to conclude that the Board has violated OMA in connection with any particular meeting.

Section 3.5(a) of OMA provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General ***not later than 60 days after the alleged violation***. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the ***facts supporting the allegation***. (Emphasis added.)

Under the plain language of section 3.5(a) of OMA, a Request for Review must set forth facts supporting the allegation of a potential violation of OMA in order to be subject to


December 18, 2018

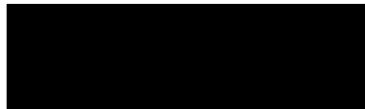
Page 2

review by this office. In this instance, your Request for Review appears to allege that the Board failed to post notice of a special meeting to review complaints relating to the unauthorized release of student records, but you did not identify when that meeting occurred or how you determined that notice was not provided in accordance with the requirements of section 2.02 of OMA (5 ILCS 120/2.02 (West 2016)). Accordingly, your Request for Review does not allege sufficient facts for this office to review the allegation that the Board failed to properly post notice for an unspecified special meeting. If the meeting in question has occurred within the 60-day timeframe described by section 3.5(a) of OMA, or if you did not discover facts concerning the alleged violation within that time frame despite using reasonable diligence, you may wish to submit a new Request for Review raising specific allegations concerning that particular meeting and providing facts supporting those allegations.

Your November 27, 2018, Request for Review also included complaints concerning the alleged unauthorized release of student records and various requests for School District records. To the extent that you intended for the Public Access Counselor to review those additional complaints, this office notes that pursuant to section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2016)), the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). Because your allegations concerning the unauthorized release of student records do not provide a factual basis for a violation of OMA or FOIA, they are not subject to review by this office. Regarding your requests for School District records, while a public body is required to respond to all written FOIA requests,¹ your Request for Review did not allege that the School District failed to respond to any FOIA requests for the records identified.

Accordingly, this office has determined that no further action is warranted in this matter and this file is closed. If you have any questions, please contact me at (312) 814-5383 or the Chicago address on the first page of this letter.

Very truly yours,



S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

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¹See 5 ILCS 140/3 (West 2016).


December 18, 2018

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cc: The Honorable Gayle Crawford
Board President
Frankfort Community Unit School District No. 168
900 North Cherry Street
West Frankfort, Illinois 62896



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

December 19, 2018.

Via electronic mail

Mr. Darren B. Meyers, P.E.
President
International Energy Conservation Consultants, LLC
7877 Marquette Drive South
Tinley Park, Illinois 60477
dmeyers@ieccode.com

Via electronic mail

Mr. Paul S. Kmetz, P.E.
Deputy General Counsel
Capital Development Board
401 South Spring Street
318 William G. Stratton Building
Springfield, Illinois 62706
Paul.Kmetz@illinois.gov

RE: OMA Request for Review – 2018 PAC 54184

Dear Mr. Meyers and Mr. Kmetz:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that the Energy Code Advisory Council (Council) of the Capital Development Board (Board) was late to complete OMA's electronic training requirements, but that no further action is warranted as to the other allegations raised by Mr. Darren B. Meyers.

On July 25, 2018, Mr. Meyers, President of International Energy Conservation Consultants, LLC, submitted a Request for Review to the Public Access Bureau alleging that the Board and Council had violated OMA in various ways. Specifically, he alleged: (1) the Board had posted notice of the Council's July 16, 2018, meeting on July 9, 2018, rather than "adequate notice (10 or more days)"; (2) the Council had posted no notice for certain meetings in 2014 and 2015, and had posted between one and 21 business days' notice for 25 other meetings between February 15, 2012, and July 16, 2018 (including at least three business days' notice for the

Mr. Darren B. Meyers, P.E.

Mr. Paul S. Kmett, P.E.

December 19, 2018

Page 2

meetings held within the previous 60 days); (3) it was inconvenient to hold a meeting on July 16, 2018, because many of the parties were in Texas for an industry conference; (4) members of the Council had not completed OMA's electronic training curriculum, nor were they versed in Robert's Rules of Order or the "Capital Development Board Code Amendment Procedures for the Illinois Energy Conservation Code"; and (5) the Board/Council had not clearly communicated in the "Capital Development Board Code Amendment Procedures for the Illinois Energy Conservation Code" that position papers or other additional information could have been offered into testimony.¹ Mr. Meyers attached correspondence from the Council's e-mail list concerning Council meetings and a copy of the "Capital Development Board Code Amendment Procedures for the Illinois Energy Conservation Code."

This office determined that further action was warranted only as to whether all of the members of the Council had completed OMA's electronic training requirements. On August 27, 2018, this office sent a copy of the Request for Review to a Board attorney charged with advising the Council and asked for copies of the certificates of completion of the OMA electronic training for all of the members of the Council, together with a written explanation as to whether the Council members took the training within the time periods specified in section 1.05 of OMA (5 ILCS 120/1.05 (West 2016)). On September 4, 2018, the Council provided this office with certificates of completion for all twelve of its members and confirmed that they had completed the OMA electronic training curriculum.

On September 5, 2018, this office forwarded a copy of the Council's response to Mr. Meyers. On September 6, 2018, Mr. Meyers submitted a reply. On September 14, 2018, Mr. Meyers submitted a supplemental reply.

DISCUSSION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Accordingly, this office does not have the authority to review alleged violations of other statutes, rules, or regulations, such as Robert's Rules of Order or a State agency's adherence to its code amendment procedures.

¹Letter from Darren B. Meyers, P.E., President, International Energy Conservation Consultants, LLC, to Sara[h] Pratt, Public Access Counselor, Office of Attorney General (July 24, 2018), at 2-4.

Mr. Darren B. Meyers, P.E.
Mr. Paul S. Kmett, P.E.
December 19, 2018
Page 3

Meeting Notice

With respect to Mr. Meyers' allegations other than his claim that members of the Council had not completed the OMA electronic training curriculum, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) generally requires a public body to post notice of any regular or special meeting at least 48 hours in advance of the start of the meeting. Accordingly, this office determined that no further action was warranted as to Mr. Meyers' allegation that the Council had provided three or more business days' notice for the meetings held within the 60 days prior to the submission of his Request for Review.

Mr. Meyers replied to that decision by arguing:

[I]n accordance with (5 ILCS 120/2.02), the [Council] has not nor [sic] ever prepared or made available a schedule of all its regular meetings at the beginning of any calendar of fiscal year, much less calendar years 2017 or 2018 or Illinois State fiscal years 2016-17, 2017-18, a violation of OMA and nullifying any claim to 48 hours' notice.

Thereby, and in accordance with (5 ILCS 120/2.03), announcements of regular meeting dates require at least ten (10) days' notice; and publication in a newspaper of general circulation

in the area in which such body functions (i.e., the State of Illinois, 2015 Pop. 12,859,995).^[2]

Mr. Meyers claimed that the Council violated OMA in connection with its May 15, 2018, June 20, 2018, June 28, 2018, and July 16, 2018, meetings by not providing at least 10 days' notice.

Section 2.02(a) of OMA provides that "[e]very public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings." Section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) further provides that "[i]n addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings." In construing these provisions, the Public Access Bureau has previously determined:

Under the plain language of these provisions, a public body that meets regularly and has scheduled regular meetings for the year must make its regular meetings schedule available to the public. In contrast, a public body that does not hold regularly-scheduled meetings is not required to produce an annual regular meeting schedule, as the rationale of providing transparency to the public about the plans a public body has made to meet in the future is inapplicable when the public body does not meet at regular intervals and has not yet decided when it will meet throughout the year. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 26850, issued July 27, 2015, at 5 ("[I]f the meetings of a committee of the Board are set in advance at routine intervals throughout the year, the Board must provide annual notice of the schedule of such committee meetings[.]"), *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 41790, issued June 29, 2016, at 2 (public body with no present plans to meet in the future because of lack of funding had no schedule of regular meetings to make available and thus did not violate section 2.03), *and* Ill. Att'y Gen. PAC Req. Rev. Ltr. 17663, issued December 14, 2011, at 1 ("If a public body has not, or is unable to, establish a schedule of regular meetings at the beginning of the calendar year, the absence of a posted annual regular meeting schedule does not violate the requirements of

²Letter from Darren B. Meyers, P.E., President, International Energy Conservation Consultants, LLC, to Joshua M. Jones, Deputy Bureau Chief, Public Access [Bureau] (September 6, 2018), at 1-2.

Mr. Darren B. Meyers, P.E.
Mr. Paul S. Kmetz, P.E.
December 19, 2018
Page 5

OMA."). Ill. Att'y Gen. PAC Req. Rev. Ltr. 49458, issued September 13, 2017, at 1-2.

On September 17, 2018, an Assistant Attorney General in the Public Access Bureau telephoned a Board attorney who advises the Council to verify whether the Council holds regular meetings throughout the year, or instead meets on an ad hoc basis. The Council's attorney confirmed that the Council is not the type of public body that holds regularly-scheduled meetings. Instead, it primarily holds meetings every three years around the time when the Illinois Energy Conservation Code³ is being updated. This office has not received any information to the contrary. Rather, Mr. Meyers referenced "the somewhat 'regular' meetings convened every three years,"⁴ and provided a list of Council meetings held since February 15, 2012, which evinces that the Council does not hold meetings at regular intervals throughout the year. Therefore, the following language from section 2.03 of OMA is inapplicable to the intermittent Council meetings that are within the scope of this Request for Review: "If a change is made in regular meeting dates, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions." The Public Access Bureau has consistently determined that this ten-day notice requirement applies only when a public body is changing its regular meeting dates going forward (i.e. from the first Monday of each month to the first Tuesday of each month), rather than when a single (special) meeting is scheduled or rescheduled. *See e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 21021, issued March 11, 2013 (public body not required to provide 10 days' notice by publication for a special meeting). Mr. Meyers' claim that the Council was required to provide at least 10 days' advance notice of its May 15, 2018, June 20, 2018, June 28, 2018, and July 16, 2018, meetings is unsupported by the language of OMA and thus unavailing.

As to the meetings from more than 60 days before Mr. Meyers submitted his Request for Review, Mr. Meyers argued that he had not discovered those alleged instances of insufficient notice within 60 days after they occurred despite utilizing reasonable diligence; he stated that he had discovered those alleged deficiencies "upon reviewing the history of" Council meetings.⁵ However, he provided no information supporting the assertion that he utilized reasonable diligence in connection with those claims, such as checking for the posting of agendas around the times that those meetings were held. Therefore, his allegations concerning

³71 Ill. Adm. Code §600.100 *et seq.* (2018), last amended at 40 Ill. Reg. 2754, effective January 20, 2016.

⁴E-mail from Darren B. Meyers, P.E., CEM, REP, BPI-BA/EP, President, Architectural Engineering, International Energy Conservation Consultants, LLC, to Joshua [Jones] (September 17, 2018).

⁵E-mail from Darren B. Meyers, P.E., CEM, REP, BPI-BA/EP, President, Architectural Engineering, International Energy Conservation Consultants, LLC, to Sara[h] Pratt, Public Access Counselor, Office of Attorney General (July 24, 2018).

Mr. Darren B. Meyers, P.E.
Mr. Paul S. Kmett, P.E.
December 19, 2018
Page 6

those meetings are untimely, and this office lacks the authority to review them under section 3.5(a) of OMA.

Convenience of the July 16, 2018, Meeting Date

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) provides, in relevant part: "All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." OMA does not define what is "convenient." Undefined statutory terms must be given their plain and ordinary meaning. *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 275 (2009) (finding that where a statute fails to specifically define a word, a court may use a dictionary to determine the word's plain and ordinary meaning). "'Convenient' means 'suited to a personal comfort or to easy performance' or 'affording accommodation or advantage.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 361 (4th Dist. 2003) (quoting Merriam-Webster's Collegiate Dictionary 252 (10th ed. 2000)). Although the court in *Gerwin* addressed the issue of whether a meeting place (a small room) rather than a meeting time was convenient, the term "convenient" in section 2.01 modifies both "times" and "places." "Open" and "convenient" are not synonymous under the Act; accordingly, "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. To the same extent, a meeting can be held at such an unaccommodating, unadvantageous time that the public would be unreasonably deterred from attending it. The concept of public convenience implies a "rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362 (quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993)).

Mr. Meyers alleged that the July 16, 2018, meeting was not scheduled for a convenient time because "several, if not many, of the parties identified on the [Board's] e-mail meeting announcement would be" attending a conference on energy codes in Texas from July 15, 2018, through July 17, 2018.⁶ Although the information Mr. Meyers provided to this office suggests that the July 16, 2018, meeting time was inconvenient for at least some individuals who wished to attend, the e-mails Mr. Meyers provided to this office do not indicate that the timing of the meeting was unreasonable for the public in general. The meeting was scheduled for 10:00 a.m. to noon on a Monday, which was a business day. This office has previously determined that a meeting at 10:00 a.m. on a business day was not held at an unreasonable time. Ill. Att'y Gen. PAC Req. Rev. Ltr. 38389, issued June 19, 2017, at 5. Under the specific circumstances of this

⁶Letter from Darren B. Meyers, P.E., President, International Energy Conservation Consultants, LLC, to Sara[h] Pratt, Public Access Counselor, Office of Attorney General (July 24, 2018), at 2-4.

matter, the facts Mr. Meyers has alleged are insufficient to conclude that the July 16, 2018, meeting was held at an unreasonable time.

OMA Training

Section 1.05(b) of OMA (5 ILCS 120/1.05(b) (West 2016)) sets forth the requirements for members of public bodies to complete the electronic training program developed by the Public Access Counselor:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after the effective date of this amendatory Act of the 97th General Assembly shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

- (1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or
- (2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

* * *

The failure of one or more members of a public body to complete the training required by this Section does not affect the validity of an action taken by the public body. (Emphasis added.)

It is undisputed that most of the members of the Council had not completed the OMA electronic training curriculum at the time that Mr. Meyers submitted his Request for Review, despite the fact that most of those members had served on the Council for years.

Mr. Darren B. Meyers, P.E.
Mr. Paul S. Kmett, P.E.
December 19, 2018
Page 8

Accordingly, the Council failed to complete the OMA electronic training requirement in a timely manner. By its plain language, however, section 1.05 of OMA does not invalidate any Council actions taken before all of the members had completed the training. This office cautions the Council to ensure that in the future, any new members who have not previously completed the OMA electronic training curriculum as a member of any other public body complete the curriculum within 90 days after taking the oath of office or, if no oath is required, otherwise assuming the responsibilities of a member of the Council.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 20, 2018

Via electronic mail

RE: OMA Request for Review – 2016 PAC 43049

Dear [REDACTED]

On July 19, 2016, the Public Access Bureau received your Request for Review under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Posen-Robbins School District Board (Board) violated OMA by failing to include an adequate description of discussion that took place at its March 8, 2016, and April 12, 2016, meetings, in violation of section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)).¹ In two separate December 20, 2018, telephone conversations with members of the Public Access Bureau, you acknowledged that this file can now be closed due to the passage of time.

Accordingly, this letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,

[REDACTED]
LEO DRAWS
Assistant Attorney General
Public Access Bureau

43049 o i n f r s d

¹Section 2.06(a) of OMA provides, in relevant part, that meeting minutes shall include: "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken."



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 20, 2018

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55635

Dear [REDACTED]

On November 5, 2018, the Public Access Counselor received your Request for Review submitted pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)). Your Request for Review alleged that the City of Elmhurst Police Pension Fund Board (Board) violated OMA in connection with the review of the minutes for its November 20, 2017, closed session meeting. On December 3, 2018, the Board informed this office that on November 26, 2018, it voted to release the November 20, 2017, closed session minutes. On December 20, 2018, you advised this office that you obtained a copy of the minutes and that this office could close this Request for Review. Accordingly, this file is closed. Please contact me at (217) 524-7958 if you have questions.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

55635 o wdrawn mun

cc: *Via electronic mail*
Ms. Marilyn Reimer
Reimer & Dobrovolny PC
mreimer@rdlaborlawpc.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 21, 2018

Via electronic mail

[REDACTED]

Mr. Beau Fretueg
Superintendent
Schuyler-Industry Community Unit School District No. 5
740 Maple Avenue
Rushville, Illinois 62681

RE: OMA Request for Review – 2012 PAC 22268

Dear [REDACTED] and Mr. Fretueg:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On November 19, 2012, this office received [REDACTED] Request for Review alleging that the Schuyler-Industry Community Unit School District No. 5 (School District) Board of Education (Board) violated the requirements of OMA by: (1) taking final action during its September 19, 2012, meeting on certain items that were not on the agenda; (2) holding special meetings on September 24, 2012, and October 9, 2012, to address payables and employee disciplinary matters, respectively; (3) amending the minutes of its September 19, 2012, meeting at its October 24, 2012, meeting "inside of the required 48 hour period"; and (4) not having approved the minutes of its August meeting to date.¹

As an initial matter, a Request for Review must include a summary of facts supporting the allegation that a public body violated OMA. 5 ILCS 120/3.5(a) (West 2012). With regard to items 2 and 3 of his Request for Review, [REDACTED] did not provide facts

¹OMA – Request for Review by Public Access Counselor (PAC) form submitted by [REDACTED] (undated).

[REDACTED]
Mr. Beau Fretueg
December 21, 2018
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supporting the allegation that the Board violated OMA; he did not identify any deficiencies with the September 24, 2012, and October 9, 2012, special meetings, and a public body does not violate OMA by correcting draft minutes within the 48 hours prior to a meeting. Accordingly, this office took no further action with respect to those claims.

As to the remaining allegations, this office forwarded a copy of [REDACTED] Request for Review to the Board on January 18, 2013, and asked it to provide this office with copies of the September 19, 2012, meeting agenda and minutes, together with a response to the allegations. On January 28, 2013, this office received a written response from then-School District Superintendent, Mr. R. Mathew Plater, on behalf of the Board. This office also received copies of the Board's agendas and minutes from its September 19, 2012, September 24, 2012, and December 19, 2012, meetings. On January 30, 2013, this office forwarded a copy of the response to [REDACTED] he did not reply.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2012)) further provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." Additionally, section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2012)) provides: "A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later."

In the Board's written response, Mr. Plater acknowledged that "[t]he agenda for the September 19th meeting did not include action items for approval of the August minutes or to approve the Sept. Payables, financial statements and activity accounts."² However, he asserted that the omissions were inadvertent, and that the Board subsequently took measures to remedy them. Mr. Plater explained that the Board had decided to eliminate the use of a consent agenda, which normally contained those items, after using such a process for many years. He stated that the Board did not notice the missing action items prior to mailing out the agenda. According to Mr. Slater, the Board was uncertain how to handle the situation at the meeting in question. Mr. Slater stated that the Board proceeded with action on the items but then later decided to hold a special meeting on September 24, 2012, to reapprove the bills; he stated that notice of that special meeting was properly posted. With regard to the Board's August meeting minutes, Mr. Plater stated that the Board was unable to approve the minutes in September due to scheduling

²Letter from R. Mathew Plater, Superintendent, Schuyler Industry Community Unit School District #5, to Asst. Attorney General La[V]ine (January 23, 2018).


Mr. Beau Fretueg
December 21, 2018
Page 3

conflicts, and that approval of the minutes was mistakenly left off of the Board's October meeting agenda, while no regular meeting was held in November. Nonetheless, he noted:


The August minutes although not officially approved were posted to the district website in late August for the public to view. It is our practice to share the minutes on our website as soon as they are typed in an attempt to keep them informed. If the minutes are amend or changed at subsequent meetings the corrected minutes are reposted to the website.^{3]}

Mr. Plater stated that the August meeting minutes were approved at the Board's December regular meeting and provided this office with copies of the agenda and minutes of that December meeting.

In this matter, the Board acknowledged that it took action on certain items at its September 19, 2012, meeting that were not set forth in the agenda, and that it did not approve the minutes of its August regular meeting until after its second subsequent regular meeting had occurred. Accordingly, the Board violated sections 2.02(c) and 2.06(b) of OMA. Because the Board appears to have held a properly-noticed special meeting on September 24, 2012, to re-vote on the items omitted from the September 19, 2012, meeting agenda, and because the Board subsequently approved the August 22, 2012, meeting minutes, this office has determined that no further remedial action is required under these circumstances.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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³Letter from R. Mathew Plater, Superintendent, Schuyler Industry Community School District #3, to Asst. Attorney General Lavine (January 23, 2018).

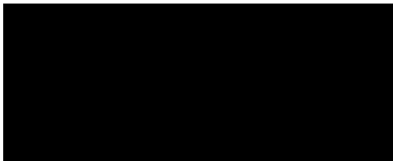


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 26, 2018

Via electronic mail



Via electronic mail

Ms. Danielle Kiger
Office Manager and FOIA Officer
Clark County Park District
Mill Creek Lake & Campground
20482 North Park Entrance Road
Marshall, Illinois 62441
dkiger@ccparkdistrict.com

RE: OMA Requests for Review – 2015 PAC 36413; 2015 PAC 36585¹

Dear [REDACTED] and Ms. Kiger:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, [REDACTED] also allegations that the Clark County Park District Board of Trustees (Board) and its Architectural Control Committee (Committee) violated OMA on July 11, 2015, are undisputed.

On July 18, 2015, this office received [REDACTED]'s Request for Review alleging that the Committee did not provide proper notice of its July 11, 2015, meeting. [REDACTED] also alleged that the Board violated OMA during the July 11, 2015, meeting because a majority of a quorum of Board members were in attendance and discussed matters of public business that were outside the scope of the Committee's purview. On August 3, 2015, this office sent a copy of the Request for Review to the Board and asked it to provide a detailed written response to [REDACTED] allegations, together with copies of the notice, agenda, and minutes for the alleged July 11, 2015, meeting. The Board did not respond. On July 7, 2016, this office again sent a copy of

¹This office mistakenly opened two Requests for Review concerning the same allegations.

[REDACTED]
Ms. Danielle Kiger
December 26, 2018
Page 2

the Request for Review to the Board but again did not hear back. Numerous subsequent attempts to contact the Committee and Board were unsuccessful.

On November 26, 2018, an Assistant Attorney General (AAG) in the Public Access Bureau contacted the Park District's FOIA officer, Ms. Danielle Kiger, inquiring about a response in these matters. On November 28, 2018, Ms. Kiger provided two July 11, 2015, Campers Committee² meeting agendas, one for 9:00 a.m. and one for 10:15 a.m., together with a response explaining that no additional information could be located, in part because no personnel were currently employed with the Park District from the time of the meeting in question. [REDACTED] did not submit a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2014)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) defines a "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

The requirements of OMA are not automatically triggered merely because a majority of a quorum attends a gathering. *See University Professionals of Illinois v. Stukel*, 344 Ill. App. 3d 856, 868 (1st Dist. 2003) (OMA is not "triggered every time public officials meet and converse"). In determining whether a gathering of a majority of a quorum of the members of

²In a December 10, 2018, telephone conversation with an AAG in the Public Access Bureau, Ms. Kiger acknowledged that the July 11, 2015, Campers Committee meeting was not at issue in these matters. Rather, Ms. Kiger asserted that the agendas provided were the only meeting records she could locate for the entirety of the relevant time period.

a public body constitutes a "meeting" subject to OMA, the Illinois Supreme Court has instructed that "[t]he Act is only addressed to meetings designed to discuss or reach an accord with regard to public business which properly should be deliberated or acted upon in an open forum." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 210 (1980). See also *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (A gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of [public] business."). Therefore, it generally would not constitute a Board meeting for Board members to sit in on a Committee meeting, but discussion of non-Committee public business by a majority of a quorum of the Board during a Committee meeting could qualify as a Board meeting.

Furthermore, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides, in pertinent part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded.

In addition, section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2014)) requires all public bodies to keep written minutes of all their meetings.

Neither the Board nor the Committee responded to this office's inquiry letters in 2015 and 2016. Thus, neither public body provided information from which this office could evaluate the validity of [REDACTED] claims in a timely manner. Recently, the Park District's current FOIA officer explained to this office that she was unable to locate any information pertaining to the Committee referenced in [REDACTED] Requests for Review, in which he alleged that "[t]he Architectural Control Committee was appointed for the specific stated purpose of reviewing documents in relation to 'leased lots' [a map of these leased lots is located at the park district main office] that the Park District is attempting to lease to private individuals."³ This office's review of the July 11, 2015, Campers Committee meeting agenda, however, revealed that notice appears to have been provided of that committee's discussion of property leases for

³E-mail from [REDACTED] to Public Access [Bureau] (July 18, 2015).

[REDACTED]
Ms. Danielle Kiger
December 26, 2018
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adjacent homeowners, as well as the review of a draft lease. While those agenda items appear to pertain to [REDACTED] allegations, suggesting that the applicable public body was instead the Campers Committee, the failure by any representative of the Park District to answer this office's inquiries has hampered our ability to fully review this matter. This office has received no information as to where and when notice was posted of the July 11, 2015, meeting, or the extent to which a majority of a quorum of the Board deliberated or acted upon Board business. Accordingly, [REDACTED] allegations that the Board and the Committee violated the requirements of OMA in connection with the July 11, 2015, meeting are undisputed.

This office reminds the Board conduct both its regular meetings and committee meetings in full compliance with OMA. Specifically, the Board and its committees should provide at least 48 hours' advance notice of all future meetings. When a majority of a quorum of the Board wishes to discuss a matter of public business that is not within the scope of a committee's purview during a meeting of that committee, the Board should give notice that it will be meeting alongside that committee. The Board and its committees should also keep written minutes of all of their meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close these files. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address on the first page of this letter.

Very truly yours,

[REDACTED]
CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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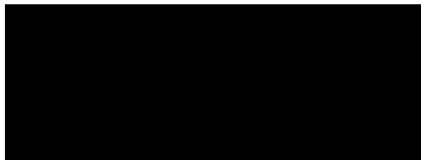


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 27, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 56066

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Board of Trustees (Board) of the Bradford Community Fire Protection District (District) violated OMA in connection with its November 18, 2018, and December 6, 2018, meetings.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the **facts supporting the allegation**. (Emphasis added.)

In your Request for Review, you stated that no trustees showed up for the Board's scheduled November 18, 2018, monthly meeting, and that notice of the cancellation was neither posted at the meeting location to inform the public nor provided to the press. You also stated that the Board had held a special meeting on December 6, 2018, involving Mr. James Reisner, the Chief Executive Officer and owner of The Ambulance Service. You stated that the Board signed a contract during the meeting to replace the Bradford Rescue Squad with The Ambulance Service, and alleged: "The Press was not apprised of this either."¹ Additionally, you claimed

¹Letter from [REDACTED] to Public Access [Bureau] (December 11, 2018).

December 27, 2018

Page 2

that no bidding was publicized for this contract, and you expressed concern about how the change will affect response times.


As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). OMA concerns the transparency with which public bodies meet and conduct public business; it does not govern how or when contracts are bid out or what form of ambulance service is provided for an area. Accordingly, the Public Access Bureau does not have the authority to review those issues.

With respect to the apparent cancellation of the November 18, 2018, meeting, although the information you provided indicates that members of the public would have benefited from being notified of the cancellation rather than finding out by showing up at the closed fire house, OMA does not specify any steps that a public body must take to cancel a meeting. Therefore, the Public Access Bureau has consistently determined that a public body does not violate OMA by not providing written notice of the cancellation of a meeting. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 26009, issued January 24, 2013, at 3.

Turning to the December 6, 2018, special meeting, you claimed that the press was not apprised of action taken at the meeting to replace the Bradford Rescue Squad. Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) provides, in relevant part:

The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given.

Although this provision requires a public body to provide any news medium that has filed an annual request with notice of its special meetings, your Request for Review did not set forth any facts indicating that the Board failed to provide such a news medium with notice. Section 2.02(b) does not require a public body to inform the press after a meeting of action taken during the meeting. Absent facts supporting the allegation that the Board violated OMA in connection with its November 18, 2018, and December 6, 2018, meetings, this office has determined that no further action is warranted in this particular Request for Review. If you are able to provide facts supporting the allegation that the Board failed to provide notice of the December 6, 2018, meeting to a news medium that had requested such notice, you may wish to submit a new



December 27, 2018

Page 3

Request for Review setting forth those facts within 60 days after the alleged December 6, 2018, violation. 5 ILCS 120/3.5(a) (West 2016).

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address at the bottom of the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: Mr. Jason Cresto
President, Board of Trustees
Bradford Community Fire Protection District
239 West Main Street
Bradford, Illinois 61421



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 27, 2018

Via electronic mail
The Honorable Alyssia Benford
[REDACTED]

RE: OMA Request for Review – 2018 PAC 56195

Dear Ms. Benford:

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/ 3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received December 20, 2018, you claimed that the Public Participation Ordinance adopted by the DuPage Township Board (Board), over your dissenting vote as a member of the Board, contains language that violates OMA. You asserted that the Public Access Bureau has previously determined that similar language in the Wesley Township Board's public comment rules violated OMA, citing Ill. Att'y Gen. PAC Req. Rev. Ltr. 53822 53830 53873, issued November 7, 2018.

Section 3.5(a) of OMA (5 ILCS 120/ 3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act by a public body has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

Section 2.06(g) of OMA (5 ILCS 120/ 2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules, or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules but those rules unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7.


The Honorable Alyssia Benford
December 27, 2018
Page 2

Your Request for Review asked this office to evaluate the propriety of the Board's public comment rules absent a specific complaint that the Board enforced those rules to improperly prevent a member of the public from addressing public officials at a meeting. In contrast, the determination you referenced regarding the Wesley Township Board examined specific instances in which particular members of the public were restricted from addressing the members of that public body during a particular meeting. Because your Request for Review did not allege that any member of the public was improperly prohibited from addressing the Board, you have not provided facts supporting the allegation that the Board violated section 2.06(g) of OMA. Accordingly, this office will take no further action in this matter.

Nonetheless, this office is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7 (West 2016). In that capacity, this office notes that "the primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. As such, this office has previously determined that the right to public comment includes the right to address individual members of a public body. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2018, at 5-6. This office therefore suggests that the Board review and revise its rule requiring members of the public to direct comments to the presiding officer, unless specifically permitted to address other Board members or officers, to ensure that it upholds the public's right to address all public officials.

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

56195 o no fi war mun

cc: *Via electronic mail*
The Honorable William M. Mayer
Supervisor, DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440
wmmayer@dupagetownship.com

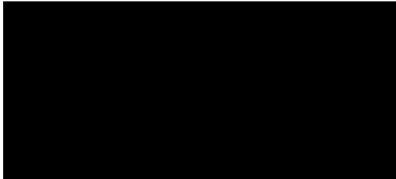


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 27, 2018

Via electronic mail



RE: OMA Request for Review – 2018 PAC 56202

Dear [REDACTED],

Pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016), the Public Access Bureau has received your Request for Review alleging a possible violation of OMA by the Board of Education (Board) of Chicago Ridge School District 127.5 (District). Our review of the information you have furnished, however, provides no basis for the Public Access Counselor to conclude that the Board violated OMA.

Section 3.5(a) of OMA provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the facts supporting the allegation."

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at *open meetings*." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. (Emphasis added.)

Your Request for Review alleges that the District superintendent denied your request to address the Board during a closed session. As such, you have not provided a summary of facts from which we could determine that the Board violated OMA by enforcing its rules to prohibit you or any other members of the public from exercising their statutory right to address the Board during an open meeting. No provision of OMA requires a public body to enter closed

[REDACTED]
December 27, 2018

Page 2

session to receive confidential information from a former employee. Although you also stated that you believe the District superintendent attempted to impede your access to the open meeting, you acknowledged that he informed you that you did not require his permission to attend the meeting. To the extent that you object to restrictions to your access to school property for other purposes, those restrictions are not governed by OMA.

Because the facts you have alleged do not indicate that the Board violated the requirements of OMA, this office has determined that no further action is warranted in this matter. Accordingly, this file is closed. Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

[REDACTED]
Very truly yours, [REDACTED]

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau
[REDACTED]

56202 o no fi war sd

cc: *Via electronic mail*
Mr. Thomas M. Kucharski, President
Board of Education
of Chicago Ridge School District 127.5
6135 West 108th Street
Chicago Ridge, Illinois 60415
tkucharski@crsd1275.org

cc: *Via electronic mail*
Dr. Kevin B. Russell, Superintendent
Chicago Ridge School District 127.5
6135 West 108th Street
Chicago Ridge, Illinois 60415
krussell@crsd1275.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2018

Via electronic mail
Ms. Vicky Schoenrock
Warren-Newport Public Library
224 North O' Plaine
Gurnee, Illinois 60031
vschoenrock@wnpl.info

Re: OMA Request for Review – 2014 PAC 29042

Dear Ms. Schoenrock:

This morning, you informed the Public Access Bureau by telephone that you no longer seek assistance with the above-captioned Request for Review alleging that the Warren-Newport Public Library Board of Trustees (Board) potentially violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) because the Board now has new membership. Accordingly, this file is closed. Please contact me at (312) 814-8413 or jjones@atg.state.il.us if you have questions. Thank you.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

29042 o wdrawn lib



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2018

Via electronic mail



Via electronic mail

Steven M. Richart
Hodges Loizzi Eisenhammer Rodick & Kohn LLP
3030 Salt Creek Ln., Suite 202
Arlington Heights, IL 60005
srichart@hlerk.com

RE: OMA Requests for Review – 2018 PAC 53883

Dear [REDACTED] and Mr. Richart:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, the Public Access Bureau is unable to conclude that the Zion-Benton Township High School District 126 Board of Education (Board) violated OMA in connection with its June 28, 2018, meeting.

On July 5, 2018, [REDACTED] submitted a Request for Review alleging that the Board prohibited her husband, [REDACTED] from participating in the public comment portion of its June 28, 2018, meeting because he did not sign up to speak. On July 16, 2018, this office sent a copy of the Request for Review to the Board president and asked for a copy of the Board's public comment rules and a response to [REDACTED] allegation. On August 22, 2018, counsel for the Board furnished those materials. On September 6, 2018, [REDACTED] replied to that response. On September 17, 2018, both parties submitted additional information to this office.

DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly-tailored and necessary to further a significant governmental interest. See *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 4. However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. See *I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25; *Timmon*, 633 F. Supp. 2d at 459.

The Board's public comment rules provide that speakers may "[a]ddress the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President."¹ In her Request for Review, [REDACTED] alleged that after she and another member of the public addressed the Board under the fourth agenda item which designated time for public comment, [REDACTED] requested an opportunity to do so before the Board moved on to the next agenda item. According to [REDACTED] the Board president responded that it was too late and that [REDACTED] could not speak because he had not placed his name on the sign-up sheet. [REDACTED] stated that the Board's established and recorded rules governing public comment do not require speakers to sign a sign-up sheet.

The Board's response to this office acknowledged that its rules do not require speakers to sign up to speak. The Board stated that it has a longstanding practice of using a sign-up sheet to facilitate public comment, but denied that [REDACTED] was prohibited from speaking because he did not sign up. The Board's response asserted that the Board president only referred to [REDACTED] not signing the sign-up sheet because he had signed it in the past. According to the Board, [REDACTED] did not request an opportunity to speak until "the Board had already closed the public comment portion of the meeting agenda and moved into the next agenda item, and a motion had been made and seconded to approve the consent agenda."² The Board's meeting minutes provide:

¹Zion-Benton Township High School District 126 Board of Education Policy 2:230 (revised August 27, 2009).

²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP (August 22, 2018), at 2.

██████████
Mr. Steven M. Richart
December 28, 2018
Page 3

A motion was made by Secretary Leech, seconded by Member Roberts to approve the Consent Agenda. Citizen ██████████ interrupted the business portion of the meeting and requested to address the Board. President White advised that public comment had concluded. President White called for the roll and the motion was approved by a roll call vote of members present voting 4-1.^[3]

In her reply, ██████████ reiterated that the Board president cited ██████████ not signing the sign-up sheet as a reason for denying him an opportunity to address the Board and stated that the current Board president did not conclude the public comment portion of the meeting by announcing public comment was closed or by asking the audience if anyone else wished to speak. Because of that omission, she asserted, ██████████ had no opportunity to request to speak before the Board president had moved on to the next agenda item: "While ██████████ may have interrupted the meeting, it was not a flagrant interruption, as ██████████ was only trying to address the Board to have an opportunity to speak."⁴ She stated that at the following meeting, the Board president did ask the public if anyone wished to address the Board before closing public comment and moving on to the next agenda item.

On September 17, 2018, counsel for the Board submitted an additional response stating that ██████████ did not approach the podium to speak even though ██████████ had addressed the Board from the podium and returned to her seat.

If ██████████ had wanted to speak at that time, he would have stood up and approached the podium as he has done at prior meetings and as he has witnessed others do at several meetings he has attended[.] * * * However, it appears that what happened is that he changed his mind and decided to speak only after the Board had moved on to the next agenda item. (Indeed, I am told that when he first spoke up, he explicitly stated that he had not originally intended to speak to the Board, but he wished to do so now.).^[5]

³Zion-Benton Township High School District 126 Board of Education, Regular Meeting, June 28, 2018, Minutes 1-2.

⁴Letter from ██████████ to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (undated).


⁵E-mail from Steven M. Richart, Attorney, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to [Steve] Silverman (September 17, 2018).

On the same date, ██████████ replied that the Board president did not ask if any other members of the public wished to speak or "close the public comment portion of the meeting and instead went right to the next agenda item so quickly that no one in the audience, including myself a former board member and someone very well versed in the process, knew what was happening."⁶

The Board has expressly denied that it prohibited ██████████ from speaking because he did not sign the sign-up sheet that it uses to facilitate public comment. Although the Board president referred to ██████████ not signing the sign-up sheet when he denied his request to speak after the Board moved on to the next agenda item, there is insufficient evidence for this office to conclude the prohibition was based on the sign-up sheet rather than its rule that limits public comment to the designated public comment portion of the meeting. Such a rule is content neutral and promotes efficiency and decorum by preventing interruptions. *See* Ill. Att'y Gen. Req. Rev. Ltr. 42969, issued May 25, 2017 (a public body that provides an opportunity for the public to speak at the time provided for in its established and recorded rules is not required to provide additional opportunities for public comment during other parts of a meeting). Accordingly, this office concludes that the Board's rule is permissible section 2.06(g) of OMA.


If the Board had ended the public comment portion of the meeting and transitioned to the next agenda item so abruptly that members of the public did not have a meaningful opportunity to invoke their right to speak, the Board could have violated section 2.06(g) of OMA. In light of the parties' conflicting accounts, however, this office is unable to determine that the Board did so. It is unclear precisely when ██████████ determined that he wished to speak and whether he had an adequate opportunity to express that intent before the Board moved on to the next agenda item. Accordingly, this office is unable to conclude that the Board violated OMA by prohibiting ██████████ from addressing the Board after the public comment portion of the meeting ended. Nevertheless, because it appears that there may have been confusion concerning the timing of the public comment portion of the meeting, this office recommends that the Board clearly communicate its intent to conclude public comment before moving on to the next agenda item to ensure that members of the public have an adequate opportunity to invoke their statutory right to address the Board.

⁶E-mail from ██████████ to [Steve] Silverman (September 17, 2018).


Mr. Steven M. Richart
December 28, 2018
Page 5

The Public Access Counselor had determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us. This file is closed.

Very truly yours,


STEVE SILVERMAN
Bureau Chief
Public Access Bureau

53883 206g pub comment proper sd



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 31, 2018

Via electronic mail
Ms. Diane Benjamin
blnnews@yahoo.com

RE: OMA Request for Review – 2016 PAC 42582

Dear Ms. Benjamin:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On June 24, 2016, you submitted a Request for Review to the Public Access Bureau alleging that the City of Bloomington Liquor Commission (Commission) improperly deliberated about public business in private. On July 18, 2016, this office sent a copy of the Request for Review to Mayor Tari Renner but did not hear back. This office also has not heard from you about this matter since your submission.

In the interim, however, the Public Access Bureau determined that the Commission is not a public body subject to OMA, as it "is not an advisory or subsidiary body of a public body such as the City Council which is subject to the requirements of OMA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 43179, issued February 16, 2017, at 3. (Copy of determination enclosed.) Because the Commission's deliberations are not subject to OMA, the Commission did not violate OMA with respect to the deliberations at issue in your Request for Review.¹

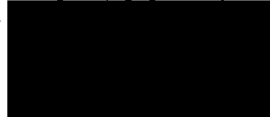
The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed.

¹Your Freedom of Information Act (FOIA) complaint regarding the communications at issue was resolved under file number 2016 PAC 42586.

Ms. Diane Benjamin
December 31, 2018
Page 2

If you have any questions, please contact me at (312) 814-8413,
jjones@atg.state.il.us, or at the Chicago address on the bottom of the first page of this letter.

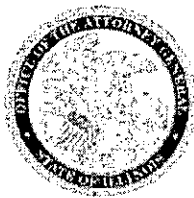
Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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Enclosure

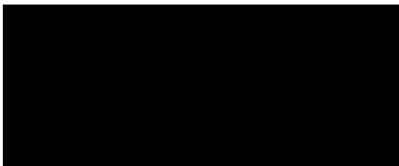


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 16, 2017

Via electronic mail



Via electronic mail

Mr. George D. Boyle
Assistant Corporation Counsel
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61702
gboyle@cityblm.org

RE: OMA Request for Review – 2016 PAC 43179

Dear [REDACTED] and Mr. Boyle:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, this office concludes that the Bloomington Liquor Commission (Commission) did not hold a meeting subject to the requirements of OMA on June 21, 2016.

On July 26, 2016 [REDACTED] submitted this Request for Review alleging that the Commission violated the requirements of OMA on September 21, 2016, by holding a special meeting and taking action without a quorum of its members physically present.¹ Specifically, Mr. Renner alleged that only Commissioner Tari Renner, who also serves as the Mayor of Bloomington, attended and conducted Commission business. On August 5, 2016, this office sent a copy of the Request for Review to the Commission and asked for a written response to the allegations therein, together with copies of the notice, agenda, and minutes for the June 21, 2016, special meeting.

¹Section 2.01 of OMA (5 ILCS 120/2.01 (West 2014)) requires a quorum of the members of a public body to be physically present at the location of an open meeting.

Mr. George D. Boyle
February 16, 2017
Page 2

On August 19, 2016, the Commission's counsel provided the requested materials and a written response asserting that Mayor Renner was authorized to conduct the business in question on his own as Commissioner, so no quorum was required for the actions that he took. [REDACTED] did not reply.

DETERMINATION

Section 2.01 of OMA (5 ILCS 120/ 2.01 (West 2014)) provides that "[a]ll *meetings* required by this Act to be public shall be held at specified times and places which are convenient and open to the public." (Emphasis added.) In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)):

"Meeting" means any *gathering*, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, *of a majority of a quorum of the members of a public body* held for the purpose of discussing public business[.] (Emphasis added.)

The Commission is comprised of Mayor Renner and two other commissioners. Counsel for the Commission, in his response to this office, questions whether the Commission qualifies as a "public body" subject to OMA. Section 1.02 of OMA (5 ILCS 120/1.02 (West 2014)) defines the term as follows:

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "Public body" does not include a child death review team or

the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act, or the Illinois Independent Tax Tribunal.


The City's website states that the Commission is an "advisory Board to the Mayor and City Council. Members of the Commission are appointed by the liquor commissioner (Mayor)."² The Commission's response to this office, however, asserted that the Liquor Commission is separate and distinct from the City Council and that it merely assists the Mayor in exercising powers that he is authorized to take independently. In particular, section 4-2 of the Liquor Control Act of 1934 (235 ILCS 5/4-2 (West 2014)) provides, in pertinent part:

The mayor or president of the board of trustees of each city, village or incorporated town or his or her designee, and the president or chairman of the county board or his or her designee, shall be the local liquor control commissioner for their respective cities, villages, incorporated towns and counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted[.] * * *

However, such mayor, president of the board of trustees or president or chairman of the county board or his or her designee ***may appoint a person or persons to assist him in the exercise of the powers and the performance of the duties herein provided for such local liquor control commissioner.*** (Emphasis added.)

Thus, the Commission assists the Mayor to carry out his duties as Commissioner in his individual capacity as Mayor rather than as the head of the City Council. Therefore, the Commission is not an advisory or subsidiary body of a public body such as the City Council which is subject to the requirements of OMA. Although there may have been confusion about the applicability of OMA in this instance because of information posted on the City's website and because the Commission appears to have abided by requirements of OMA – such as posting

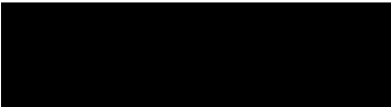
²City of Bloomington, Illinois, Liquor Commission, <http://www.cityblm.org/index.aspx?page=417> (last visited October 13, 2016).


Mr. George D. Boyle
February 16, 2017
Page 4

advance notice of meetings and making minutes of meetings available to the public³ – the Mayor acted pursuant to his statutory authority as Commissioner at the June 21, 2016, special meeting. Because the requirements of OMA do not apply to the Commission, no violation of OMA occurred in connection with that meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address listed on the first page of this letter.

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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³ City of Bloomington, Illinois, Liquor Commission,
<http://www.cityblm.org/index.aspx?page=417> (last visited October 13, 2016).

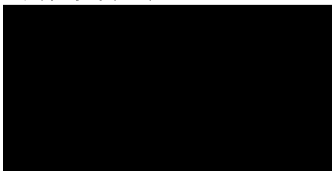


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 31, 2018

Via electronic mail



RE: OMA Request for Review - 2018 PAC 55971

Dear [REDACTED]

On December 4, 2018, the Public Access Bureau received your Request for Review alleging that the Aurora Public Library Board of Trustees (Board) violated the Open Meetings Act (OMA) in connection with its potential sale of real estate to a school district. During a telephone conversation with an Assistant Attorney General in the Public Access Bureau on December 28, 2018, you agreed to withdraw your Request for Review at this time but may resubmit if you learn sufficient facts indicating that a majority of a quorum of Board members discussed this matter outside of an open or closed (executive) Board meeting. Accordingly, this letter shall serve to close this files.

As we discussed, the Public Access Bureau received an OMA Request for Review on November 13, 2018, alleging that the Board improperly discussed this matter during its executive session meetings. That Request for Review was assigned the file number 2018 PAC 55687, and that allegation is currently under review. You may wish to contact me in the next several months to obtain a copy of the determination letter issued in that matter. You can reach me directly at (312) 814-6437, lbartelt@atg.state.il.us, or the Chicago address listed below.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 2, 2019

Via electronic mail

RE: OMA Request for Review – 2018 PAC 55901

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons that follow the Public Access Bureau has determined that no further action is warranted in this matter.

Section 3.5(a) of OMA provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the facts supporting the allegation."

Your Request for Review alleges that the minutes of the October 16, 2018, meeting of the Ogden International School of Chicago Local School Council (Council) are inaccurate. Based on the allegations made in your previous Request for Review, 2018 PAC 55372, and the minutes provided, we construe your current Request for Review to allege that the minutes were inaccurate because they do not reflect that Mr. Michael Beyer, Council Secretary, spoke after a public comment. You also provided this office with copies of the October 16, 2018, minutes, your previous Request for Review allegations, and the determination from this office in that matter (Ill. Att'y Gen. PAC Req. Rev. Ltr. 55372, issued November 1, 2018).

The requirement to keep minutes is governed by section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)), which provides, in pertinent part:

All public bodies shall keep written minutes of all their meetings, whether open or closed * * *. Minutes shall include, but need not be limited to:

[REDACTED]
January 2, 2019

Page 2

(3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

You have not alleged that the Council failed to include in its minutes of its October 16, 2018, meeting a summary of all matters proposed, deliberated, or decided during the meeting. Rather you allege that the minutes do not reflect that a member of the Council responded to a public comment. This office has previously determined that OMA does not require a public body to provide a detailed summary of any matter that was merely *discussed* by a public body if the discussion did not rise to the level of deliberating upon or considering a related decision. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 40718, issued January 9, 2017, at 3-4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 25528, issued March 5, 2014, at 3. There is no indication that the Council held deliberations or took final action related to the public comment at issue. Because the facts you have alleged do not indicate that the Council violated the requirements of OMA, this office has determined that no further action is warranted in this matter. Accordingly, this file is closed.

Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours, [REDACTED]

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

55901 o.no fi war sd

cc: *Via electronic mail*
Mr. David R. Ramos, Sr.
President
Ogden International School of Chicago
Local School Council
ogdenlsc@gmail.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2019

Via electronic mail
The Honorable Tammy Hines
Board Member
Columbia Community Unit School District No. 4
Board of Education
tammy@tammymitchellhines.com

Via electronic mail
Dr. Gina Segobiano
Superintendent
Columbia Community Unit School District No. 4
5 Veterans Parkway
Columbia, Illinois 62236
segobiano.gina@columbia4.org

RE: OMA Request for Review – 2018 PAC 53820

Dear Ms. Hines and Dr. Segobiano:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Columbia Community Unit School District No. 4 (District) Board of Education (Board) violated the requirements of OMA in connection with its May 17, 2018, and June 25, 2018, meetings.

On June 29, 2018, Ms. Tammy Hines, a member of the Board, submitted a Request for Review alleging that the Board violated OMA during its May 17, 2018, meeting. Specifically, Ms. Hines asserted that after returning from closed session, the Board approved

three motions that were identified on the agenda only as "personnel items,"¹ which Ms. Hines alleges did not sufficiently identify the general subject matter of the Board's final actions. Ms. Hines also alleged that an agenda for the May 17, 2018, meeting was improperly modified less than 48 hours before the May 17, 2018, meeting.

Ms. Hines' Request for Review also alleged that the Board violated OMA by not posting a copy of the agenda for its June 25, 2018, special meeting on the District's website at least 48 hours before that meeting commenced; she asserted that the agenda was not posted until six to eight hours before the meeting.²

On August 7, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to respond to Ms. Hines' allegations. Additionally, this office asked the Board whether the District's website was maintained by a full-time staff member. On August 13, 2018, this office received the Board's response. On August 15, 2018, this office forwarded the Board's response to Ms. Hines; she did not reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Notice of Final Action at May 17, 2018, Meeting

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body." Further, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not contain a definition of "general subject matter."

¹Columbia Community Unit School District 4 Board of Education, Agenda Item XI., Items for Action after Closed Session, A. Personnel Items (May 17, 2018).

²Ms. Hines' Request for Review contained additional allegations, however, Ms. Hines withdrew those allegations on August 1, 2018. E-mail from Tammy Hines to Shannon Barnaby (August 1, 2018).

The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, adding section 2.02(c) to OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * **general notice** if you're going to have and take final action, **as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon.** (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

The minutes from the May 17, 2018, Board meeting indicate that after returning from closed session, the Board voted to approve: (1) an assignment of the Columbia Middle School principal; (2) 2018-2019 non-union employee salaries; and (3) 2018-2019 administrative salaries.³ The agenda included language similar to that provided in section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018),⁴ stating that the Board would be enter closed session for:

Purposes of employment or dismissal of employees, appointment, compensation, discipline, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public

³Columbia Community Unit School District No. 4 Board of Education, Meeting, May 17, 2018, Minutes 6.

⁴The Board's agenda item for closed session also used certain language from sections 2(c)(2) and 2(c)(8) of OMA (5 ILCS 120/2(c)(2), 2(c)(8) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). Those exceptions, which concern collective bargaining and school security, are not relevant to the actions disputed by Ms. Hines.

body or against legal counsel for the public body to determine its validity.^[5]

The following agenda item stated:

Items for Action after Closed session
A. Personnel Items^[6]

In its response to this office, the Board appears to assert that the language in the closed session section of its agenda coupled with the reference to action on personnel items after closed session provided the public with advance notice of the motions that the Board approved on employee appointment and compensation. When read in tandem, these agenda items may be construed to indicate that the Board would take some form of action concerning personnel.

This office has previously determined that an agenda item for "personnel matters" did not provide sufficient advance notice of a public body's vote to approve an employment contract. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 13540, issued June 22, 2011, at 4. Likewise, here, "personnel items" could encompass virtually any matter relating to any District personnel. Further, the language in the closed session section of the Board's agenda did not reasonably identify the general subject matter of the Board's actions. Even though compensation and appointment were among the subjects identified as potential topics of discussion, the list included other irrelevant employment-related topics. Although section 2.02(c) does not require that the agenda identify the subject of possible final action by name or the specific action being contemplated, the Board's agenda item was too imprecise to provide meaningful notice to the public that the Board would take action concerning the assignment of an administrator and the compensation of employees and administrators.

The Board argued that a superintendent's report and an amended agenda provided to Board members contained a more specific description of the actions to be taken after closed session. However, it is undisputed that members of the public did not receive copies of those materials at least 48 hours prior to the meeting. As discussed above, the intent of section 2.02(c) of OMA is to ensure that an agenda provides **members of the public** with sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action. Providing additional information only to Board members has no relevance to the Board's

⁵Columbia Community Unit School District 4 Board of Education, Agenda Item X., Closed Session (May 17, 2018).

⁶Columbia Community Unit School District 4 Board of Education, Agenda Item XI., Items for Action after Closed Session, A. Personnel Items (May 17, 2018).

obligation under section 2.02(c) to provide members of the public with sufficient advance notice concerning the Board's votes.

Accordingly, this office concludes that the Board violated the notice requirements of section 2.02(c) of OMA with respect to its May 17, 2018, votes on: (1) an assignment of the Columbia Middle School principal; (2) 2018-2019 non-union employee salaries; and (3) 2018-2019 administrative salaries. However, this office has confirmed that on September 25, 2018, the Board re-voted on the two motions approving employee and administrator salaries⁷ and on July 19, 2018, the Board resolved the issue concerning the assignment of an administrator by a vote in open session to approve the Columbia Middle School principal's contract.⁸ Therefore, no additional action is necessary to remedy these violations.

Amending of May 17, 2018, Meeting Agenda

Section 2.02(a) of OMA requires the posting of an agenda at least 48 hours in advance of the holding of a meeting. A public body may not take final action on a matter unless it has been properly posted on the agenda at least 48 hours prior to a meeting. *See Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1122-1123 (4th Dist. 2002).

In its response to this office, the Board acknowledged that an amended agenda was provided to Board members at their desks immediately before the start of the May 17, 2018, meeting. As noted above, the revision to the relevant agenda item appears to have been intended to provide the Board with additional information; it did not add or remove any items proposed for final action. It is undisputed, however, that the publicly posted agenda remained unchanged, and continuously available for viewing, for the 48 hours before the meeting commenced.

The requirements of OMA in section 2.02 of OMA are limited to publicly posted agendas that provide advance notice to the public. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 25275*, issued December 17, 2018, at 3. Therefore, although section 2.02(a) of OMA does not permit a public body to take final action on an agenda item that was revised on a publicly posted agenda less than 48 hours before the meeting commenced, no provision of OMA prohibits a public body from separately amending an internal agenda to provide additional details on agenda items to better inform board members of what is expected to transpire at a meeting. Accordingly, this

⁷Columbia Community Unit School District No. 4 Board of Education, Meeting, September 25, 2018, Minutes 6.

⁸Columbia Community Unit School District No. 4 Board of Education, Meeting, July 19, 2018, Minutes 6 (August 16, 2018).

The Honorable Tammy Hines
Dr. Gina Segobiano
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office concludes that the Board's amendments to the internal version of its May 17, 2018, meeting agenda did not violate section 2.02(a) of OMA.

Meeting Notice for June 25, 2018, Special Meeting

Section 2.02(a) of OMA provides, in pertinent part, that "[p]ublic notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special" meeting. Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) further provides:

Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. **In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body.** (Emphasis added.)

Accordingly, under section 2.02(b) of OMA, a public body is required to post a copy of the agenda of a special meeting on its website 48 hours before the meeting, if its full-time staff maintains the website. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 39850, issued July 31, 2017, at 3-4.*

Ms. Hines' Request for Review alleged that that the Board violated OMA by not posting notice of its June 25, 2018, special meeting on the District's website at least 48 hours before that meeting commenced. The Board's response to this office acknowledged that the agenda was not timely posted to the website but explained that the full-time staff member responsible for the website posting was on vacation when the agenda should have been posted. The Board argued that its failure to post the agenda to its website did not violate OMA because it provided proper physical notice of the special meeting by posting copies of the meeting agenda on the front door of the District office 48 hours before the meeting and by e-mailing the agenda to the faculty and staff of the District and members of the Board.

Under the plain language of section 2.02(b) of OMA, the Board was required to post notice of the June 25, 2018, special meeting at the Board's principal office **and** on its website. Adopting the Board's argument that a public body with a website maintained by a full-time staff member somehow complies with this provision by only posting an agenda at the Board's principal office and by e-mailing the agenda to Board members is contrary to the plain language of section 2.02(b), which expressly requires the posting of the agenda on the website. *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶16,


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25 N.E.3d 570, 576 (2013) (Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express."). There are no exceptions to OMA's website posting requirements for situations in which individuals responsible for website posting are on vacation—it is incumbent on a public body to make alternative arrangements to fully comply with the advance notice requirements of OMA.⁹ Accordingly, this office concludes that the Board violated section 2.02(b) of OMA by failing to post the agenda for its June 25, 2018, meeting to the District's website 48 hours before the meeting commenced.

Because the Board indicated in its response to this office that it is taking measures to prevent similar errors in the future¹⁰ and because at least one copy of the agenda was posted at the District's principal office and available for public inspection at least 48 hours before the meeting, no further remedial action is required in this instance.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes this matter. If you have questions, you may contact me by mail at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thank you.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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⁹Notably, section 2.02(c) of OMA provides, in pertinent part: "If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting." In contrast to the foreseeable circumstances of this matter, the Public Access Bureau has previously determined that a village council substantially complied with the notice requirements of OMA when its agenda was posted four days before the meeting but was inadvertently removed from the council's website by its agenda management software provider during an update to its system. See Ill. Att'y Gen PAC Req. Rev. Ltr. 25618, issued December 5, 2013.

¹⁰The Board's response to this office indicated that the individual responsible for posting the agenda on the District's website will provide the relevant posting instructions to other persons so that the agenda can still be posted in her absence.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2019



RE: OMA Request for Review – 2018 PAC 56235

Dear 

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, dated December 18, 2018, you alleged that the Board of Commissioners (Board) of the Metropolitan Water Reclamation District of Greater Chicago (District) failed to perform semi-annual reviews of its closed session minutes in 2011, 2013, 2015, 2017, and 2018. You also alleged that the Board disregarded the spirit of the law by keeping all of its closed session minutes from the previous eight years confidential.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) sets the procedural requirements for the submission of a Request for Review of an alleged OMA violation as follows:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later than 60 days after the alleged violation**. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, **not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence**, the request for review may be made **within 60 days of the discovery of the alleged violation**. (Emphasis added.)

This Request for Review concerns section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)), which provides:

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

Additionally, section 2.06(f) of OMA (5 ILCS 120/2.06(f) (West 2016)) provides, in relevant part: "Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential[.]"

As an initial matter, by their plain language, sections 2.06(d) and 2.06(f) of OMA afford the members of a public body complete discretion in determining whether to keep closed session minutes confidential. Although OMA favors open deliberations as a matter of public policy,¹ a public body's decision not to release closed session minutes from the most recent eight years violates neither the letter nor the spirit of OMA given that the Act grants public bodies the express authority to hold closed sessions on certain topics and to keep the minutes of those closed sessions confidential for as long as they deem necessary.

Your allegations that the Board did not properly perform semi-annual reviews in 2011, 2013, 2015, and 2017 are also unavailing because they were not submitted on time. The years 2011, 2013, and 2015 ended more than two years before you submitted your Request for Review on December 18, 2018. Because the maximum amount of time in which a Request for

¹5 ILCS 120/1 (West 2016).

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Review under section 3.5(a) of OMA may be submitted is "2 years after the alleged violation," you missed the deadline with respect to those years. Additionally, although you claimed that you discovered the alleged violation concerning the 2017 semi-annual reviews on September 7, 2018, when you received a response to a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) request regarding the dates of the Board's semi-annual reviews, the December 18, 2018, submission of your Request for Review occurred more than 60 days later. Therefore, you did not submit your Request for Review "within 60 days of the discovery of the alleged violation" as required under section 3.5(a).

Lastly, as to the year 2018, the information you submitted to this office indicates that as of September 7, 2018, the Board's most recent semi-annual review and corresponding report in open session as to the need for continued confidentiality occurred on March 1, 2018. The minutes of that meeting include the item "Report on the Semi-Annual Review of Closed Meeting ('Executive Session') Minutes."² Next to that item is a hyperlink to a transmittal letter in which the District's General Counsel, Ms. Susan T. Morakalis, asserted: "[T]he Board of Commissioners conducted a review of unreleased Executive Session minutes. Pursuant to the review, it was determined that the need for confidentiality continues to exist with respect to the Executive Session minutes, and they should remain confidential."³ Further, the minutes of the Board's October 4, 2018, meeting include the same item⁴ and a link to the same type of report asserting that the Board had reviewed its closed session minutes and had elected to keep them confidential.⁵ Because the publicly available information indicates that the Board was in compliance with section 2.06(d) of OMA as of the date of the submission of your Request for Review, this office will take no further action in this matter.

²Metropolitan Water Reclamation District of Greater Chicago Board of Commissioners, Meeting, March 1, 2018, Minutes 7.

³Metropolitan Water Reclamation District of Greater Chicago, *Transmittal Letter for Board Meeting of March 1, 2018*, <http://mwrld.legistar.com/LegislationDetail.aspx?ID=3354142&GUID=FDCE5E99-F5D2-4CB9-ABFA-55E4EE96CD6E> (last visited December 28, 2018).

⁴Metropolitan Water Reclamation District of Greater Chicago Board of Commissioners, Meeting, October 4, 2018, Minutes 8.

⁵Metropolitan Water Reclamation District of Greater Chicago, *Transmittal Letter for Board Meeting of October 4, 2018*, <http://mwrld.legistar.com/LegislationDetail.aspx?ID=3688119&GUID=D0E961CA-360E-4FB2-B003-CC53CDF82B53> (last visited December 28, 2018).

[REDACTED]
January 3, 2019

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This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: Ms. Gabrielle Giamarusti
Senior Legal Assistant
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 4, 2019

[REDACTED]
P.O. Box 191
Tallula, Illinois 62688

RE: OMA Request for Review – 2018 PAC 56224

Dear [REDACTED]

On December 24, 2018, the Public Access Bureau received your Request for Review, dated December 20, 2018, in which you allege that the Village of Tallula (Village) Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)) in connection with the minutes from its August 14, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. In this instance, your December 20, 2018, Request for Review alleged that you learned "after the [August 14, 2018,] meeting"¹ about a threat made against you during the meeting and that the Board violated OMA by failing to include a reference to the threat in its minutes for that

¹Letter from [REDACTED] to Sarah Pratt, Public [Access] Counselor (December 20, 2018), at 1.

[REDACTED]
January 4, 2019

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meeting. Your Request for Review included a copy of the September 25, 2018, Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) response you received from the Village providing you with a copy of the August 14, 2018, Board meeting minutes. Accordingly, you discovered the content of the August 14, 2018, meeting minutes on or around September 25, 2018, which is more than 60 days before you filed your December 20, 2018, Request for Review. Further, your Request for Review does not allege facts to establish that you did not discover within 60 days that the alleged threat was made at the meeting, despite using reasonable diligence. To the contrary, your Request for Review suggests that you learned of the alleged threat soon after the August 14, 2018, meeting. Because you did not submit your Request for Review before the statutory period for doing so expired, this office lacks authority to review your allegations concerning the August 14, 2018, meeting minutes.

Additionally, with respect to your assertions regarding the Village's financial practices, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and FOIA. *See* 15 ILCS 205/7(c)(3) (West 2016). Because neither FOIA nor OMA governs the financial practices of municipalities, your questions are beyond the scope of this office's authority.

Accordingly, this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter or at (217) 524-7958.

Very truly yours

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: The Honorable Gary Espenschied
President
Village of Tallula Board of Trustees
P.O. Box 77
Tallula, Illinois 62688

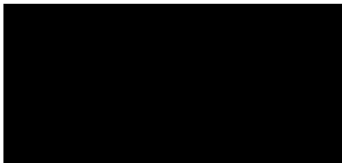


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 7, 2019

Via electronic mail



Re: OMA Request for Review – 2012 PAC 21283

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)).

On September 6, 2012, you submitted a Request for Review to the Public Access Bureau alleging that the Livingston County Board (Board) and the Law & Justice Center Committee (Committee) violated OMA in connection with various meetings.

First, you alleged that it was inconvenient for the Committee to hold its meetings at 1:00 p.m. on a weekday. Section 2.01 of OMA (5 ILCS 120/2.01 (West 2012)) provides, in relevant part: "All meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." The concept of public convenience implies a "rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003) (quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993)). This office has previously determined that a meeting held during business hours was not held at an unreasonable time. Ill. Att'y Gen. PAC Req. Rev. Ltr. 38389, issued June 19, 2017, at 5 (10:00 a.m. weekday meeting time not unreasonable). In this instance, although the 1:00 p.m. meeting time may have been inconvenient for some members of the public, it does not appear that the time was unreasonably inconvenient for the public in general.

You next alleged that weekly construction update meetings were being held with select Committee members, but acknowledged that a quorum was not present for these gatherings. The requirements of OMA apply to each "meeting" of a public body. 5 ILCS

120/1 (West 2016). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" among themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.").

In this instance, the facts you set forth in your Request for Review are insufficient for this office to determine that a quorum of a 5 member public body or a majority of a quorum of a public body with a greater number of members met and deliberated about public business outside of a properly-noticed open meeting. Therefore, this office is unable to conclude that the Committee held improper closed meetings. *See* 5 ILCS 120/3.5 (West 2012) (requiring a Request for Review to set forth "a summary of the facts supporting the allegation.").

You also alleged that the Committee refused to take questions during the public comment portion of its July 2, 2012, meeting and that the Board did the same during its July 19, 2012, meeting, though both public bodies allowed comments. Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The right to comment during an open meeting includes the right to ask questions of public officials,


January 7, 2019


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notwithstanding that OMA does not require public officials to respond to questions or comments. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2. Because your Request for Review confirmed that members of the public were permitted to comment at both meetings, no further action is warranted as to this allegation. Similarly, your claim that the Board almost ended its August 30, 2012, meeting without allowing public comment, but then reversed course and took public comment, means that the Board averted a potential OMA violation by allowing public comment.

Lastly, with respect to your complaint about the audibility of meetings before the building was renovated, hopefully that issue has since been rectified with microphones, as you indicated you anticipated. If Board meetings still have audibility issues, you have the option of submitting a new Request for Review alleging that one or more particular meetings were not reasonably accessible on that basis.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address listed on the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 7, 2019

Via electronic mail

Post Office Box 144
Oquawka, Illinois 61469

Mr. Andrew L. Youngquist
Beal, Pratt & Pratt
Attorneys at Law
57 South East Public Square
P.O. Box 200
Monmouth, Illinois 61462-0200

RE: OMA Request for Review – 2018 PAC 53901

Dear [REDACTED] and Mr. Youngquist:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On July 5, 2018, the Public Access Bureau received a Request for Review from [REDACTED] alleging that the Village of Oquawka Board of Trustees (Board) potentially violated OMA in connection with its May 1, 2018, meeting. [REDACTED] alleged that the Board's annual meetings schedule indicated that the Board would meet on May 8, 2018, but that the Board instead met on May 1, 2018, and subsequently changed the annual meetings schedule to reflect a meeting on that date.

On July 11, 2018, the Public Access Bureau sent a copy of [REDACTED] Request for Review to the Board and asked it to confirm whether it had met on May 1, 2018; if so, this office asked the Board to provide this office with copies of the notice/agenda and minutes of the meeting (in draft form if necessary) for this office's review, together with a written response explaining when and where notice for the meeting was posted. This office also asked the Board to address whether it had posted an annual meetings schedule that listed a meeting on May 1, 2018, and/or May 8, 2018, and at what point any changes to the date(s) listed on that schedule

██████████
Mr. Andrew L. Youngquist
January 7, 2019
Page 2

were made. On July 24, 2018, this office received those materials from an attorney for the Board. On July 26, 2018, this office forwarded a copy of the Board's written answer to ██████████. She did not submit a reply.

DISCUSSION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). To that end, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires that "an agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Furthermore, section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) provides, in relevant part:

In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in **regular meeting dates**, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. (Emphasis added.)

The Public Access Bureau has consistently determined that the language "regular meeting dates" in section 2.03 of OMA means that a public body must provide 10 days' notice for changing its regular meeting dates going forward, such as from the first Monday of each month to the first Tuesday of the month. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 37690, issued April 20, 2017, at 3. To reschedule a single regular meeting, a public body simply needs to provide at least 48 hours' advance notice of the new meeting time. OMA does not set forth any procedural requirements for a public body to cancel a single meeting.

In his answer to this office's letter, the Board's attorney stated that the Board holds its regular meetings on the first Tuesday of each month, and that "[i]n May of this year the Board met for its regular meeting on May 1, 2018, that being the first Tuesday of May."¹ The Board's

¹Letter from Village of Oquawka by Andrew L. Youngquist, Beal, Pratt & Pratt, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (July 18, 2018).


Mr. Andrew L. Youngquist

January 7, 2019


Page 3

attorney further stated that notice for the May 1, 2018, meeting was properly posted more than 48 hours in advance of the meeting at the public body's principal office and meeting location. Acknowledging that the Board's annual meetings schedule originally listed the date May 8, 2018, the Board's attorney asserted that this was a typo, and he noted that the text at the top of the annual meetings schedule correctly stated that Board meetings would be held on the first Tuesday of each month. Moreover, the Board's attorney stated that at least 48 hours prior to the start of the May 1, 2018, meeting, the annual meetings schedule was amended to reflect the right date.

Although the Board's original typo of May 8, 2018, on the annual meetings schedule appears to have inadvertently caused confusion about the actual meeting date, the information that the Board's attorney has provided to this office indicates that the Board properly posted notice for its May 1, 2018, meeting, by posting the agenda at the Village's principal office and the meeting location no less than 48 hours in advance of the meeting. Therefore, the Public Access Bureau concludes that the Board did not violate OMA in connection with notice of that meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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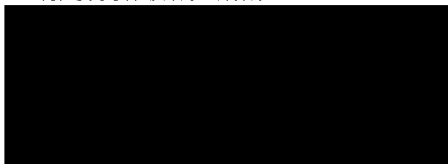


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 8, 2019

Via electronic mail



Via electronic mail

The Honorable William Hadley
Chairman
Stephenson County Board
50 West Douglas Street
Freeport, Illinois 61032
whadley@co.stephenson.il.us

RE: OMA Request for Review – 2012 PAC 22540

Dear [REDACTED] and Mr. Hadley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On December 10, 2012, this office received [REDACTED] Request for Review alleging that the Stephenson County Board (Board) violated OMA during its October 10, 2012, meeting by improperly voting on an agenda item. He asserted that "[t]he county board met on October 10, 2012 with a[n] agenda item to go out for bids on a canopy they were considering building[,]" but that "[i]nstead the board voted to accept a bid for the project of building the canopy."¹ He further asserted that he did not attend the meeting because the agenda did not indicate that the Board would vote on a bid, and thus he was deprived of the right to comment on the matter before the vote. On January 2, 2013, this office forwarded a copy of [REDACTED] Request for Review to the Board and asked it to provide copies of the agenda and meeting minutes for this office's confidential review, together with a written response to [REDACTED]

¹E-mail from [REDACTED] to [Public Access Bureau] (December 10, 2012).

allegations. On January 14, 2013, this office received those materials. This office forwarded a copy of the Board's written answer to [REDACTED] on January 15, 2013; he did not submit a reply.

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2012)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Public Access Bureau has previously determined that the language of section 2.02(c) of OMA "requires a public body's agenda to identify the general subject matter of final action – not what particular action will be taken by a public body." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39177, issued February 2, 2016, at 3-4 (determining that final action under the agenda item "Illinois Rt. 53/120 Project Environmental Impact Statement" did not violate section 2.02(c) of OMA because by including the item on the agenda, the Board sufficiently conveyed that it might take final action on the matter). In contrast, when a meeting agenda contains language indicating that the public body will not be taking final action on a particular subject matter during that meeting, the public body violates section 2.02(c) if it proceeds to take action on that matter. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 54069, issued March 7, 2018, at 3 (language "First Read" in an agenda item pertaining to an ordinance indicated that the public body would not take final action on that ordinance during that meeting and therefore the public body did not provide proper advance notice of its vote on the ordinance under section 2.02(c) of OMA).

This office has reviewed the Board's October 10, 2012, meeting agenda and minutes. The meeting agenda states, in relevant part:

CHAIRMAN'S REPORT
Action items from Standing Committees

* * *


Nursing Center

* * *

- Front canopy re-bidding^[2]

The meeting minutes state that after a motion was made to approve the \$181,380 bid for the canopy project that the Board has already received, there was discussion regarding re-bidding the project.³ Ultimately, the minutes confirm, the Board voted to approve the existing bid.⁴

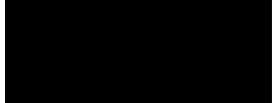
²Stephenson County Board, Agenda Topics, Chairman's Report, Action Items from Standing Committees (October 10, 2012).


The Honorable William Hadley
January 8, 2019
Page 3

In this matter, the "front canopy re-bidding" project was identified on the agenda as one of the items for consideration pertaining to the Nursing Center. While the item is listed under the portion of the agenda that is subtitled: "Action items from Standing Committees[.]" the language of the item only signaled that the Board might or might not elect to seek new bids for the front canopy project; this language does not create the inference that the Board would consider the separate matter of approving an existing bid. Because the agenda item cannot be reasonably construed to provide advance notice that the Board would take action to approve a final bid on the canopy, this office concludes that the Board's violated section 2.02(c) of OMA. Although it is not practical at this point for the Board to remedy this violation by reconsidering and re-voting on the front canopy project, the Board should take steps to ensure that agendas for all future meetings adequately and accurately describe the general subject matters on which the Board may take final action.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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³Stephenson County Board, Meeting, October 10, 2012, Minutes 5.

⁴Stephenson County Board, Meeting, October 10, 2012, Minutes 5.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2019

Via electronic mail



Via electronic mail


Mr. Michael S. Talbett
Chief Village Officer
21911 Quentin Road
Kildeer, Illinois 60047
mtalbett@villageofkildeer.com

RE: OMA Request for Review – 2012 PAC 19345

Dear [REDACTED] and Mr. Talbett:

On April 18, 2012, this office received [REDACTED] Request for Review alleging that the Village of Kildeer (Village) Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2012)) by (1) not posting notice for the Board's April 2, 2012, meeting, and its Architectural Committee's April 3, 2012, meeting at least 48 hours in advance of those meetings, and (2) scheduling the meetings outside the schedule posted on the Village's website. On May 2, 2012, this office forwarded a copy of your Request for Review to the Board and asked it to provide a written response to your allegations.

On May 17, 2012, Mr. Michael S. Talbott, the Village Administrator whose current title is Chief Village Officer, responded to the Public Access Bureau on behalf of the Village, its Board, and Committee. Mr. Talbott acknowledged that the Village failed to post the agendas a full 48 hours in advance of the two meetings, explaining that the error was inadvertent, that the agendas were posted as soon as the error was discovered, and that he would redouble his efforts to make sure there is full compliance with the notice requirements in the future. The Village Administrator also provided copies of the agenda for the Board's April 2, 2012, special


Mr. Michael S. Talbett
January 9, 2019
Page 2

meeting, the agenda for the Architectural Committee's April 3, 2012, meeting, and a copy of its schedule of regular meetings.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) provides, in pertinent part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. * * * Public notice of any special meeting except a meeting held in the event of a bona fide emergency * * * shall be given at least 48 hours before such meeting[.]

Because it is undisputed that the notices for the Board's April 2, 2012, special meeting and the Architectural Committee's April 3, 2012, meeting, were not posted 48-hour in advance of those meetings, this office concludes that the Board violated the technical requirements of section 2.02(a) of OMA. No remedial action is required because the Board confirmed that the violation resulted from an inadvertent error and ensured this office that it would comply with the notice requirements in the future.

Section 2.03 of OMA (5 ILCS 120/2.03 (West 2012)) provides, in pertinent part, that "each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its **regular meetings** for such calendar or fiscal year, listing the times and places of such meetings." (Emphasis added.) Because the Board's April 2 meeting was a special meeting, not a regular meeting, section 2.03 of FOIA did not require the Village to list that meeting on its schedule of regular meetings. Additionally, because the Village's schedule of regular meeting provided that the Architectural Committee meets only as need arises, and, therefore, does not hold regularly-scheduled meetings, it is not required to produce an annual schedule of regular Architectural Committee meetings. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 47865, issued May 22, 2017, at 2 (providing transparency through an annual schedule setting forth a public body's plans to meet in the future is inapplicable when the public body does not meet at regular intervals and does not know when it will meet). Accordingly, the Public Access Bureau concludes that the Board and Architectural Committee did not violate section 2.03 of OMA.

[REDACTED]
Mr. Michael S. Talbett

January 9, 2019

Page 3

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5201 or at the Chicago address below if you have questions.

[REDACTED]
Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2019

Via electronic mail

Via electronic mail

Ms. Sherry Graehling, Chair
City of Bloomington Historic Preservation Commission
109 East Olive Street
Bloomington, Illinois 61701
comdev@cityblm.org

RE: OMA Request for Review – 2014 PAC 29968

Dear [REDACTED] and Ms. Graehling:

On June 18, 2014, this office received [REDACTED] Request for Review alleging that the City of Bloomington (City) Historic Preservation Commission (Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)). [REDACTED] alleged that the Commission violated OMA by, among other things, failing to post an agenda or minutes to the City's website for its May 15, 2014, meeting.

On July 2, 2014, this office forwarded the Request for Review to the Commission and asked it to address [REDACTED] allegations. On July 25, 2014, this office received the Commission's response, in which it explained that the agenda for the May 15, 2014, meeting was posted more than 48 hours prior to that meeting and that the May 15, 2014, meeting minutes could not have been posted to the website at the time of [REDACTED] Request for Review because the minutes were not approved until the June 30, 2014, Commission meeting.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides, in pertinent part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is

[REDACTED]
Ms. Sherry Graehling
January 9, 2019
Page 2

to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any **regular meetings of the governing body of that public body**. (Emphasis added.)

Although the Commission's response to this office is not clear as to whether the May 15, 2014, agenda was posted to the City's website or in hardcopy format, the plain language of section 2.02(a) only requires the City's governing body—the City Council—to post meeting agendas on the City's website. Accordingly, this office concludes that the Commission did not violate 2.02(a) of OMA in connection with its May 15, 2014, meeting.

[REDACTED] also alleged that the Commission failed to post the minutes of its May 15, 2014, meeting to the City's website. Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2014)) provides, in part:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. [* * *] [A] public body that has a website that the full-time staff of the public body maintains **shall post the minutes of a regular meeting of its governing body** open to the public on the public body's website within 10 days after the approval of the minutes by the public body. (Emphasis added.)

Even assuming the Commission did not post its May 15, 2014, meeting minutes on the City's website, it was not required to do so because it is not the City's governing body. Accordingly, this office concludes that the Commission did not violate section 2.06(b) of OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2014)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation." [REDACTED] made two assertions in his Request for Review referencing public comment. He stated:

If the meeting occurred I stipulate that based on inconsistencies related to the boards and commissions historical records that No public comment period of 15 minutes detailed as per Chapter 2

[REDACTED]
Ms. Sherry Graehling
January 9, 2019
Page 3

Section 86 – Public Comment City of Bloomington adopted code on the agenda. Once it is made available to the Attorney General's office and online as prescribed by the Open Meetings Act.^[1]

[REDACTED] statement is vague and does not articulate an alleged violation of OMA. He also stated that there were no public comment cards available at the May 15, 2014, meeting, despite the requirement in the City Code that individuals wishing to participate in the public comment period must complete a comment card. There is no provision in OMA requiring the use of public comment cards. Further, [REDACTED] has not alleged that any individual was denied the opportunity to address the Commission at the May 15, 2014, meeting because of a failure to complete a comment card, or for any other reason.² Accordingly, [REDACTED] contentions regarding public comment are unfounded.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 524-7958 or LHarter[atg.state.il.us.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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¹E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (June 18, 2014).

²Section 2.06(g) of FOIA (5 ILCS 120/2.06(g) (West 2014)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2019

Via electronic mail
Mr. Larry Short
larry@newtonil.com

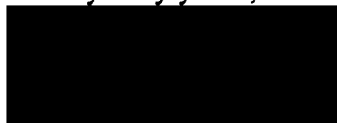
RE: OMA Request for Review – 2018 PAC 54141

Dear Mr. Short:

The Public Access Counselor has received your Request for Review concerning an alleged Open Meetings Act (OMA) violation by the Newton Village Board (Board) at its July 17, 2018, meeting. In a January 9, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that this matter may now be closed. Accordingly, this letter serves to close this matter.

If you have questions, please contact me at the Springfield address below.

Very truly yours,



CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 56322

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted in this matter.

On January 2, 2019, you submitted a Request for Review to our office alleging that the Village of Minier (Village) Board of Trustees (Board) may have violated OMA at its December 4, 2018, meeting. Specifically, you ask this office to review the "the executive section at the 12/4/18 board meeting [* * *] to determine if [the Board] unlawfully hid information from the public [because] I see no reasoning for them to hide in executive session based upon the information in the board minutes."¹ Additionally, you provided with your Request for Review a copy of the meeting minutes for the Board's December 4, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.) This office construes your Request for Review as alleging that the Board held an improper discussion during a closed session at its December 4, 2018, meeting, however, you have not provided any facts supporting that assertion. In short, you have not stated what you believe the Board discussed or why you believe that topic was improper to discuss in closed session.

¹E-mail to Public Access [Bureau, Office of the Attorney General] from [REDACTED] (January 2, 2019).

[REDACTED]
January 9, 2019

Page 2

Accordingly, because the information alleged in your Request for Review does not support a violation of OMA, we have determined that no further action is warranted on this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: The Honorable Neill Keneipp
President
Village of Minier
110 West Central Avenue
Minier, Illinois 61759



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 10, 2019

Via electronic mail



Via electronic mail

Mr. Aaron N. Szeto
Sosnoski Szeto, LLP
6735 Vistagreen Way, Suite 300
Rockford, Illinois 61107
aaron@sosnoskiszeto.com

RE: OMA Request for Review – 2018 PAC 55774

Dear [REDACTED] and Mr. Szeto:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Village of Rockton (Village) Village Board (Board) did not violate the agenda posting requirements of OMA in connection with its October 15, 2018, Administration Committee (Committee) meeting and its October 16, 2018, Board meeting.

BACKGROUND

On November 19, 2018, this office received a Request for Review from [REDACTED] alleging that the Committee held a meeting on October 15, 2018, and the Board held a meeting on October 16, 2018, without giving proper notice. [REDACTED] alleged that notice and agendas for the meetings were not posted on the Village's website.

On November 21, 2018, this office sent a copy of the Request for Review to the Board and requested that the Board or its representative provide a written response to the allegations in the Request for Review. On December 3, 2018, counsel for the Board submitted a

██████████
Mr. Aaron N. Szeto
January 10, 2019
Page 2

written answer. On December 3, 2018, this office forwarded a copy of the Board's written response to ██████████ he did not reply.

DETERMINATION


It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires an agenda for each regular meeting to be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting, and further provides: "A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body." Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) adds that "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body."

Under the plain language of sections 2.02(b) and 2.06(b) of OMA, a public body is only required to post notice and agendas of the governing body of the public body on its website if that website is maintained by the "full-time staff of the public body." The Committee is not the governing body of the public body. Accordingly, the Committee was not required to post notice or an agenda of its October 15, 2018, meeting on the Village's website.

In its written answer to this office concerning the posting of the agenda for the Board's October 16, 2018, meeting, the Board stated that the Village's website is maintained by private company that designed the website and handles technical changes to the website. The Board explained that the private company has granted the Village Clerk and the Zoning and Planning Officer with permissions to upload documents to the website. In particular, the Board stated the Village Clerk has a log-in to "upload agendas and minutes to the Village website. The ability to upload documents (e.g. agendas and minutes) is the only 'permission' that has been granted to the Village Clerk to make changes to the website."¹ Similarly, the Zoning and Planning Officer has been given a log-in to "upload zoning documents to the website and make

¹Letter from Aaron N. Szeto, Sosnoski Szeto, LLP, to Matt Hartman, Assistant Attorney General, [Public Access Bureau] (December 3, 2018), at 1-2.


Mr. Aaron N. Szeto

January 10, 2019

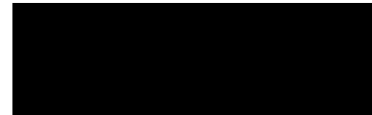
Page 3

other minor changes such as adding tabs or links."² The Board stated that the Village Clerk works part-time and the Zoning and Planning Officer is full-time. The Board asserted that because the Village Clerk maintains some portions of the website and the Zoning and Planning Officer other portions of the website, "the Village does not have any full-time staff who is responsible for maintaining the website as a whole."³

The information that the Board provided to this office does not support a finding that its website is maintained by the full-time staff of the Village. In particular, the Village does not maintain the website and its staff have limited permissions to post information to the website maintained by a third party. The staff member responsible for posting agendas to the website is not full-time. Although the Village has a staff member who is full-time and has permission to post items to the website, those items do not include meeting agendas. Because the Village does not maintain its website and because its full-time staff does not post notice or agendas to the website, this office concludes that the Board did not violate OMA by not posting notice or an agenda for its October 16, 2018, meeting to the Village's website.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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²Letter from Aaron N. Szeto, Sosnoski Szeto, LLP, to Matt Hartman, Assistant Attorney General, [Public Access Bureau] (December 3, 2018), at 2.

³Letter from Aaron N. Szeto, Sosnoski Szeto, LLP, to Matt Hartman, Assistant Attorney General, [Public Access Bureau] (December 3, 2018), at 2.

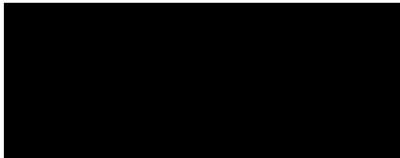


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 15, 2019

Via electronic mail



Via electronic mail

Mr. Erik R. Peck
Attorney for the Palos Township Board of Trustees
Tressler LLP
2600 East 107th Street, Suite 100
Bolingbrook, Illinois 60440
epeck@tresslerllp.com

RE: OMA Request for Review – 2018 PAC 53315

Dear [REDACTED] and Mr. Peck:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the information provided to the Public Access Bureau does not support the allegation that the Palos Township Board of Trustees (Board) violated OMA in connection with its May 14, 2018, meeting.

BACKGROUND

On May 25, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA in connection with its May 14, 2018, meeting. [REDACTED] stated that the Board entered the meeting room as a group, arriving five minutes late. He alleged that the Board had held an improper private meeting before the start of the official meeting. Additionally, [REDACTED] alleged that the Board adjourned the meeting before certain members of the public who wished to address the Board had an opportunity to do so. According to [REDACTED] members of the Take On Hate coalition attended the meeting, and 30 of the coalition's members had wished to address the Board that evening. He stated, in pertinent part:

Mr. Erik R. Peck
January 15, 2019
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When the public comment part of the meeting began at 7:11, four of our members addressed the board. Then at 7:21, one of the board's supporters took the microphone from the front of the room and addressed the public with insults. While the sergeant-at-arms interrupted our speakers, he did nothing to stop this man violating rules of the meeting. Within one minute of this speaker beginning, the board supervisor quickly called for adjournment and left without hearing the other 26 members of the public that had come to speak.^[1]

This office construed [REDACTED] Request for Review as alleging violations of sections 2(a) and 2.06(g) of OMA (5 ILCS 120/2(a) (West 2017 Supp.); 5 ILCS 120/2.06(g) (West 2016)).

On June 5, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to respond in writing to [REDACTED] allegations. In particular, this office asked the Board to address whether it had gathered just before the start of the May 14, 2018, meeting and, if so, whether that gathering was a "meeting" as defined in section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)). Additionally, this office asked the Board to address [REDACTED] allegation that the Board improperly restricted the ability of certain members of the public to address the Board. This office further asked the Board to provide a copy of any Board rules or policies governing public comment, along with copies of the meeting agenda, minutes, and video/audio recordings, if any, of the open session portion of the May 14, 2018, meeting. On June 18, 2018, this office received the Board's written response and copies of the meeting agenda and minutes. The Board stated that it had enacted public comment rules, which provide, in relevant part: "All persons addressing the public body shall maintain decorum and refrain from personal attacks of others. Question /or comments shall be limited to public business."²

On June 25, 2018, this office forwarded a copy of the Board's response to [REDACTED]
[REDACTED] he replied on July 16, 2018.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act

¹ Attachment to OMA – Request for Review by Public Access Counselor (PAC) form submitted by [REDACTED] (May 24, 2018).

² Palos Township, Ill. Code of Ordinances §2-3-6(D)(5) (2018).

[REDACTED]
Mr. Erik R. Peck
January 15, 2019
Page 3

is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Alleged Private Meeting

Section 2(a) of OMA provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA defines a "public meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

If a gathering of the members of a public body qualifies as a "meeting," then all of the requirements of OMA apply. The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. A gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business." *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982).

In its response to this office, the Board asserted that it did not meet "to discuss Palos Township business or public business of any kind[]" before the start of the official May 14, 2018, meeting. The Board stated that the trustees went into "the Township offices as the main board room was already full with residents and protesters but no discussion of public business was had at this time."³ The Board further stated that it entered the meeting late as a group as "a result of the Palos Hills Police Department being called due to a conflict in the main meeting room which looked as though it would escalate into a physical conflict."⁴ [REDACTED] replied:

³Letter from Erik R. Peck, General Counsel, Palos Township, to Teresa Lim, Esq., Assistant Attorney General, Public Access Bureau (June 18, 2018), at 1.

⁴Letter from Erik R. Peck, General Counsel, Palos Township, to Teresa Lim, Esq., Assistant Attorney General, Public Access Bureau (June 18, 2018), at 1.

I am relieved to hear that no discussion of public business took place in the meeting that took place before the public meeting began. Please ask the Board to refrain from holding private discussions during the time set aside for public meetings. Please be aware that this conduct does create the appearance that public business is being discussed before the public meeting begins.^{15]}

Accordingly, [REDACTED] accepted the Board's denial that it discussed any township matters or other public business prior to the commencement of the May 14, 2018, meeting, but correctly highlighted that private gatherings during times scheduled for Board meetings may raise an appearance of impropriety. Because there is no indication that the Board discussed public business prior to the start of the official meeting, this office concludes that the Board did not violate section 2(a) of OMA, but the Board may wish to refrain from holding private gatherings immediately prior to or during the times scheduled for Board meetings in order to avoid a potential appearance of impropriety.

Public Comment

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Under the plain language of section 2.06(g), a public body may restrict public comment only pursuant to rules it has established and recorded, which must tend to accommodate, rather than unreasonably limit, the right to address public officials. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 4, 7. A public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted in an orderly and efficient manner. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, a public body generally may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5.

In its response to this office, the Board contended that the public comment period did not proceed as intended under OMA. The Board asserted, in relevant part:

The first few citizens to comment did not to [sic] address the board but rather the audience by playing a Jeopardy like game. It was a planned presentation as there was a game board for the game which was brought to the front of the room and the persons

¹⁵E-mail from [REDACTED] to Public Access Bureau (July 16, 2018).

speaking took a card from the board and asked a question which was designed to incite a response from the audience. Several members of the public came up and took a card, asked the question on the card – during this time somebody from the audience played the theme song to Jeopardy. After several members of the public played this jeopardy like game and had no comment to the Township Board, the Supervisor indicated that public comment was not for games and that the Township Board would not participate in such.^{6]}

As to the remainder of the public comment session, the Board contended that a few members of the public addressed the Board until "a person chose to speak who did not hold the views of a majority of the attendees and he was cut off by the protestors and not permitted to proceed with his comments."⁷ The Board stated that it felt that it was unable to maintain order and consequently decided to adjourn the meeting to ensure the public safety. In particular, the Board explained: "There was yelling at the person wishing to speak and it was the feeling of the Board that control of the meeting was lost, there was no decorum by the persons in the audience and for safety reasons the meeting was adjourned."⁸

In his reply to that response, [REDACTED] disputed the Board's claim that the first few individuals were not directing their comments to the Board, arguing that the individuals "did indeed address the Board and expected responses to their questions."⁹ He acknowledged that "[t]he questions were printed out and displayed on a board" but contended that "the questions were directed at the Board."¹⁰ [REDACTED] also argued that "[t]here were no physical or verbal threats made by anyone at the meeting []" to warrant the presence of an armed police officer or the early adjournment of the meeting.¹¹ He contended that the presence of the police officer was intended to stifle public criticism. Additionally, [REDACTED] argued that the Board failed to

⁶Letter from Erik R. Peck, General Counsel, Palos Township, to Teresa Lim, Esq., Assistant Attorney General, Public Access Bureau (June 18, 2018), at 2.

⁷Letter from Erik R. Peck, General Counsel, Palos Township, to Teresa Lim, Esq., Assistant Attorney General, Public Access Bureau (June 18, 2018), at 2-3.

⁸Letter from Erik R. Peck, General Counsel, Palos Township, to Teresa Lim, Esq., Assistant Attorney General, Public Access Bureau (June 18, 2018), at 4.

⁹E-mail from [REDACTED] to [Public Access Bureau] (July 16, 2018).

¹⁰E-mail from [REDACTED] to [Public Access Bureau] (July 16, 2018).

¹¹E-mail from [REDACTED] to [Public Access Bureau] (July 16, 2018).

Mr. Erik R. Peck
January 15, 2019
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consistently enforce its public comments rules, alleging that the Board should have enforced its rules of decorum with respect to the member of the public who he claimed used racist and insulting language towards the majority of the attendees. He asserted: "Instead of rebuking this one individual, the Board adjourned the entire meeting."¹²


Based on this office's review of the information provided by both parties, the facts do not demonstrate that members of the public were improperly restricted from addressing the Board. While the parties dispute whether the first few individuals who spoke were addressing the Board, as opposed to the audience, the available information suggests that there was some form of presentation/game in which questions were displayed on a board. This office has previously determined that although the right to comment during an open meeting includes the right to ask questions of public officials, OMA does not require public officials to respond to questions or comments. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2. Specifically, this office has noted:

Section 2.06(g) does not mandate that public bodies conduct a question and answer session; rather, a public body must allow an opportunity during open meetings for "any person * * * to address" the public officials present. "Address" used as a verb is defined as "to speak or write directly to." [Citation] Thus, the plain language of section 2.06(g) of OMA contemplates the opportunity for citizens to express their views to members of a public body. OMA does not require any response by or answers from public officials. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7.

Thus, OMA did not require the Board to respond to questions posed during public comment. Because this office has not received information suggesting that the first few individuals to speak were unable to complete their questions, this office is unable to conclude that the Board improperly restricted those individuals from addressing its members. As to the remainder of the public comment session, both parties have indicated that an individual began to make comments that were contentious in nature. According to the Board, the comments incited some raised voices and passionate reactions from meeting attendees. It appears that the Board stopped the individual from continuing to speak when his comments upset the decorum of the meeting and the Board reasonably felt that it could not maintain order. The meeting minutes also indicate that there were conflicts in the parking lot before the meeting and significant unrest inside the Town Hall.¹³

¹²E-mail from [REDACTED] to [Public Access Bureau] (July 16, 2018).


¹³Palos Township Board, General Meeting, May 14, 2018, Minutes 9.


Mr. Erik R. Peck
January 15, 2019
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Under these circumstances, this office is unable to conclude that the Board improperly limited the opportunity for members of the public to address the Board. There is no indication that the Board adjourned the meeting to restrict the content of speakers' comments. Rather, it appears that a tense atmosphere pervaded the meeting and that emotional responses to comments interfered with the decorum of the meeting and provided reasonable grounds for the Board to believe that it was impractical and potentially unsafe to continue. Further, this office has not received any evidence from which we could conclude that the police presence interfered with or caused a chilling effect on public comment. Accordingly, this office concludes that the Board did not violate section 2.06(g) of OMA during its May 14, 2018, meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

53315 o 2a meeting proper 206g pub comment proper mun



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 16, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 56373

Dear [REDACTED]

The Public Access Bureau has received your Request for Review alleging violations of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the City of Chicago Mayor's Office for People with Disabilities (MOPD) Task Force on Employment and Economic Opportunity for People with Disabilities (Task Force). In particular, you allege that the Task Force did not have an agenda for its March 21, 2018, meeting and did not keep minutes of its meetings held before December 7, 2017. After reviewing the information that you have furnished, however, this office concludes that no further action is warranted.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. ***If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.*** The request for review must be in writing, must be signed by the requester, and must include ***a summary of the facts supporting the allegation.*** The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly. (Emphasis added.)

[REDACTED]
January 16, 2019

Page 2

This provision permits a person using reasonable diligence who discovers an alleged violation of OMA after the initial 60-day period has expired to submit a Request for Review within 60 days of the date that the violation was discovered.

The claims in your Request for Review concern a meeting agenda that allegedly should have been posted and meeting minutes that allegedly should have been approved more than 60 days before you filed your Request for Review. Your Request for Review included copies of an October 29, 2018, Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) request to MOPD seeking copies of agendas, minutes, and other records concerning Task Force meetings and its November 8, 2018, response to your request. You have not, however, asserted that you used reasonable diligence to discover those alleged violations within 60 days, but despite that reasonable diligence, you did not discover the alleged violations within 60 days of their occurrence. Further, it appears that a person utilizing reasonable diligence would have discovered within 60 days that there was no agenda for the March 21, 2018, Task Force meeting, because the agenda for the February 7, 2018, meeting identified the next meeting date as on March 21, 2018. Likewise, a person utilizing reasonable diligence would have discovered that there were no minutes for meetings held before December 7, 2017, because the meeting minutes would have to have been approved within 30 days of the meetings or at the Task Force's second subsequent regular meeting, whichever is later. 5 ILCS 120/2.06(b) (West 2016). For example, the second subsequent regular meeting after the December 6, 2017, meeting of the Task Force, would have been the March 21, 2018, meeting. Consequently, this office does not have authority to review the allegations.

This office will take no further action in this matter. This file is closed. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on this letter.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

56373 o 60 days mun

cc: Ms. Karen M. Tamley
Commissioner
Mayor's Office for People with Disabilities
121 North LaSalle Street
Room 104
Chicago, Illinois 60602



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 17, 2019

Via electronic mail
Mr. Michael Archey
GTM Strategies
mdarchey@mdarcheyllc.com

RE: OMA Request for Review – 2019 PAC 56431

Dear Mr. Archey:

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received January 11, 2019, you alleged that the Board of Commissioners (Board) of the Metropolitan Water Reclamation District of Greater Chicago violated OMA during its December 20, 2018, meeting.¹ Specifically, you claimed:

[A] newly installed commissioner asked the Executive Director about the status to install an independent Inspector General. Before the Executive Director had an opportunity to respond, the President of the Board of Commissioners precluded a public response by interjecting and suggesting the Executive Director update a status memorandum circulated in prior months and re-distribute to the Board. * * * I contend the Board President essentially and improperly moved the item to an "executive session" without proper notification to public or appropriate exemption.^[2]

¹The Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) allegations you submitted simultaneously are being reviewed under a separate file number: 2019 PAC 56430.

²E-mail from Michael Archey to Sarah Pratt, Public Access Counselor, Office of the Attorney General (January 11, 2019).

Mr. Michael Archey
January 17, 2019
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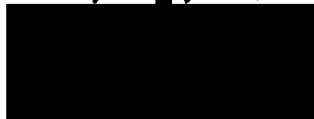
Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

Under OMA, deliberations among a majority of a quorum of the members of a nine-member public body like the Board must be held during a properly-noticed open meeting, unless the topic of the discussion meets one of the exceptions listed in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) and the meeting is properly closed in accordance with section 2a of OMA (5 ILCS 120/2a (West 2016)). 5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018. OMA does not, however, prohibit a public body from deciding not to discuss a topic in open session at a particular time, as long as the public body does not hold an unauthorized closed session about the topic.

Distributing an updated version of a confidential memorandum to the members of a public body is not tantamount to a closed session. OMA defines "meeting" as "any gathering, whether in person or by video or audio conference, telephone call, electronic means * * * or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business." 5 ILCS 120/1.02 (West 2016). Merely circulating a confidential memorandum to the members of a public body does not meet this definition. Nor is there any indication that the Board improperly entered closed session during a meeting to discuss the installation of an independent inspector general. Because the information set forth in your Request for Review does not indicate that the Board potentially violated OMA, the Public Access Bureau has determined that no further action is warranted in this matter.

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

Mr. Michael Archey

January 17, 2019

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cc: *Via electronic mail*
The Honorable Kari K. Steele
President, Board of Commissioners
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
Kari.Steele@mwr.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 18, 2019

Via electronic mail



Via electronic mail

Mr. Donald J. Storino
City Attorney
Storino, Ramello & Durkin
9501 West Devon Avenue, 8th Floor
Rosemont, Illinois 60018
don@srd-law.com

RE: OMA Request for Review – 2018 PAC 53683

Dear [REDACTED] and Mr. Storino:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau cannot conclude that the Elmhurst Zoning and Planning Commission (Commission) violated OMA in connection with the semi-annual review of its September 28, 2017, closed session minutes.

BACKGROUND

On June 21, 2018, this office received [REDACTED] Request for Review alleging that the Commission did not perform a review of the minutes from its September 28, 2017, closed session within 60 days of discovering that it had not complied with the requirement in section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)) that closed session minutes be reviewed on at least a semi-annual basis. On June 29, 2018, this office sent a copy of the Request for Review to the Commission and asked that it provide a written response to [REDACTED].

Mr. Donald J. Storino

January 18, 2019

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allegations. Specifically, this office asked the Commission whether it had met the requirements of section 2.06(d) of OMA. If the Commission had discovered that it had not reviewed its closed session minutes in accordance with section 2.06(d), this office asked it to clarify when the Commission learned of this issue. This office also asked the Commission to identify any meeting(s) from the past twelve months during which it determined and reported whether the need for confidentiality still existed as to its closed session minutes and to provide copies of the minutes from any such meeting. On July 9, 2018, the Commission provided an answer. On July 16, 2018, this office forwarded a copy of the Commission's response to [REDACTED] who replied on July 27, 2018.

DETERMINATION

Section 2.06(d) of OMA provides that:

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes, whether before or after the effective date of this amendatory Act of the 94th General Assembly, shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

The parties do not dispute that the Commission did not "strictly compl[y] with the requirements of section 2.06(d) of the OMA"¹ by failing to conduct a semi-annual review of its

¹Letter from Donald J. Storino, City Attorney, City of Elmhurst, to Laura S. Harter, Assistant Attorney General (July 9, 2018), at 3.


██████████
Mr. Donald J. Storino
January 18, 2019
Page 3

September 28, 2017, meeting minutes to determine whether the need for confidentiality still existed. However, the parties dispute when the Commission discovered its technical violation. ██████████ alleges that the Commission became aware of the violation sometime between March 1, 2018, and April 6, 2018, when the City Clerk and the City's attorneys addressed a FOIA request and a Request for Review concerning the City's compliance with section 2.06(d). ██████████ position is that the FOIA request and the Request for Review put the Commission on notice that it had violated section 2.06(d) and the Commission then had 60 days, or until June 6, 2018, at the latest, to review the closed session minutes and vote on the need for continuing confidentiality.

The Commission counters that the Clerk's knowledge of any violation cannot be imputed to the Commission, as the Clerk is not a member of the Commission. It asserts that the Commission Chair first discovered the technical violation on either June 14, 2018, or June 15, 2018, when she reviewed the agenda for the Commission's June 19, 2018, meeting, which included a semi-annual review of the closed session meeting minutes from September 28, 2017. The remaining members of the Commission became aware of the error at the June 19, 2018, meeting, during which the Commission voted against releasing the September 28, 2017, closed session minutes. In its response to this office, the Commission did not address when its attorneys first learned of the technical violation of section 2.06(d), and whether that knowledge could be imputed to the Commission. *See Yugoslav-American Cultural Center, Inc. v. Parkway Bank & Trust Co.*, 289 Ill. App. 3d 728, 737–38, 682 N.E.2d 401, 407–08 (1997) ("knowledge of an attorney is treated as knowledge of, or at least knowledge imputed to, the client, notwithstanding whether the attorney has actually communicated such knowledge to the client."). The materials ██████████ submitted to this office do not definitively establish when the Commission's attorneys learned of the violation. Accordingly, because of the conflicting facts, this office is unable to conclude that the Commission violated section 2.06(d) of OMA by failing to review the closed session minutes within 60 days of discovering its initial technical violation.

However, even if this office were to find that the Commission violated section 2.06(d), no remedial action would be necessary. The Commission voted on June 19, 2018, against releasing the September 28, 2017, closed session minutes.² Even if this vote was more than 60 days after the Commission discovered its initial violation, this office has previously concluded that OMA does not require a public body to remedy a failure to review closed session minutes within 60 days of discovering a technical violation of section 2.06(d) by disclosing all of its unreviewed closed session minutes. Ill. Att'y Gen. PAC Rev. Ltr. 52812, issued August 28,

²In his reply, ██████████ contended that the Commission's vote not "to release the Closed session meeting minutes from September 28, 2017" did not meet the minimum requirements of section 2.06(d), which requires a public body to determine whether the need for confidentiality of the minutes still exists. E-mail from ██████████ to Laura Harter (July 27, 2018). Although the language of the Commission's vote did not precisely track OMA's statutory language, a determination that the need for confidentiality still existed was implicit in the Commission's vote not to make the minutes available for public inspection.


Mr. Donald J. Storino


January 18, 2019

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2018, at 3-4. However, this office notes that the Commission must continue to review its closed session minutes no less than semi-annually as required by section 2.06(d) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958. This letter serves to close this file.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 24, 2019

Via electronic mail
Ms. Alyssia Benford
abenford@dupagetownship.com

RE: OMA Request for Review – 2019 PAC 56380

Dear Ms. Benford:

On January 7, 2019, this office received your Request for Review alleging that the Supervisor of DuPage Township (Township) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by (1) cancelling meetings of the Township's Board of Trustees (Board), and (2) failing to post a schedule of the Board's regular meetings.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

In your Request for Review, you allege that the Supervisor violated OMA by cancelling meetings without notice to all Board members and without approval of the Board. The intent of OMA is "to ensure that the actions of **public bodies** be taken openly and that their deliberations be conducted openly." (Emphasis added.) 5 ILCS 120/1 (West 2016). Further, OMA advances the State's policy of ensuring that "citizens shall be given advance notice of and the right to attend all meetings at which any business of a **public body** is discussed or acted upon." (Emphasis added.) 5 ILCS 120/1 (West 2016). In accordance with that purpose, OMA governs the transparency with which public bodies conduct public business; OMA does not govern the unilateral actions of a Board member, such as a Supervisor, outside of an open meeting. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 40963, issued April 4, 2016, at 1-2 (board president's unilateral efforts outside of board meeting to find a new school superintendent not governed by OMA). As you acknowledge in your Request for Review, OMA does not set forth any procedures for cancelling meetings or require a public body to provide advance notice in the event of a cancelled meeting. Accordingly, your allegations concerning the Supervisor's

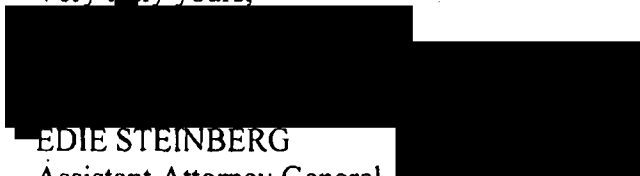
Ms. Alyssia Benford
January 24, 2019
Page 2

cancellation of Board meetings does not provide a summary of facts from which this office could conclude that the Board violated OMA.

Your Request for Review also alleges that the Supervisor violated OMA by failing to post a schedule of the Board's regular meetings. Because, as we explained above, the unilateral actions of the Supervisor outside of a meeting are not governed by OMA, we construe your Request for Review as alleging that the Township violated OMA by failing to post a schedule of the regular meetings of its Board. Section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) provides, in pertinent part, that "each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings." This office has received confirmation from the Supervisor that the Township has now posted the schedule of regular meetings on a bulletin board at its principal office and on its website. Because the Township has remedied the alleged violation of section 2.03 of OMA, no further action by the Public Access Bureau is necessary. This file is closed.

Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,


EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

56380 o no fi war inf r mun

cc: *Via electronic mail*
Mr. William Mayer
Supervisor
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440
wmmayer@dupagetownship.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 25, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56363

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the South Central Illinois Mass Transit District Board of Directors (Board) violated OMA in connection with its December 20, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the **facts supporting the allegation**. (Emphasis added.)

In your Request for Review, you stated that the Board held a meeting on December 20, 2018,¹ despite the presence of just five of the Board's members, which you assert is not a quorum of the Board under its current composition of eleven members. Specifically, you stated that although four of eleven Board positions have been vacant since November 20, 2018,

¹Letter from [REDACTED] to Public Access Counselor, Illinois Attorney General's Office (January 6, 2019). Your Request for Review states that the meeting was held on December 18, 2018, however, the meeting minutes that you provided along with your Request for Review indicates that the Board meeting was actually held on December 20, 2018. See South Central Illinois Mass Transit District Board of Directors, Meeting, December 20, 2018. Therefore, this office presumes that you intended this office to review the Board's action at its December 20, 2018, meeting.

[REDACTED]
January 25, 2019

Page 2

the Board has not taken action to reduce the number of Board positions. You allege, therefore, that this gathering was a violation of the Board's by-laws.

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Accordingly, the Public Access Bureau does not have the authority to review the Board's adherence to its own rules, local ordinances, or statutes other than OMA and FOIA. OMA governs the transparency with which public bodies meet and conduct public business; it generally does not govern other aspects of meetings, including the number of members of the Board who must be present to form a quorum or how vacancies should be treated in the Board's quorum calculation. Although section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) requires that "[a] quorum of members of a public body must be physically present at the location of an open meeting," this office has previously concluded that this requirement is limited to circumstances in which one or more members participate in the meeting despite not being physically present at the meeting location.² Ill. Att'y Gen. PAC Req. Rev. Ltr. 48860 and 49185, issued December 7, 2017 (Copy attached.).

Your Request for Review does not allege that any members of the Board attended its December 20, 2018, meeting by remote participation, such as audio or video conference, pursuant to section 7 of OMA. Therefore, your submission does not provide facts from which this office could conclude that the Board violated OMA. This is not to say that meeting and taking action without a quorum of the members of a public body is proper; rather, those quorum requirements are determined by the Board's governing rules and statutes, not OMA.


Accordingly, we have determined that no further action is warranted on this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very yours truly,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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²Section 7 of OMA (5 ILCS 120/7 (West 2016)) describes the procedures for public bodies to follow for permitting members to attend meetings by a means other than physical presence.


January 25, 2019

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cc: Mr. David Rodden
Board Member
South Central Illinois Mass Transit District Board of Directors
100 North Locust Street
Centralia, Illinois 62801



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 28, 2019

Via electronic mail

Post Office Box 124
Lee, Illinois 60530

Re: OMA Request for Review – 2013 PAC 25338

Dear [REDACTED]

This past Friday morning, you informed the Public Access Bureau by telephone that you no longer seek this office's assistance with the above-captioned Request for Review alleging that the Lee County Board was holding private meetings in violation of the Open Meetings Act (OMA). Accordingly, this file is now closed. Please contact me at (312) 814-8413 or jjones@atg.state.il.us if you have questions. Thank you.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 29, 2019

Via electronic mail

Via electronic mail

Mr. James A. Petrunaro
Scariano, Himes and Petrarca, Chartered
2 Prudential Plaza, Suite 3100
180 North Stetson
Chicago, Illinois 60601
jpetrunaro@edlawyer.com

RE: OMA Request for Review – 2014 PAC 29630

Dear [REDACTED] and Mr. Petrunaro:

On May 30, 2014, this office received [REDACTED] Request for Review alleging that the Lemont-Bromberek Combined School District No. 113A Board of Education (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2012)). [REDACTED] alleged that the Board violated OMA by failing to approve the March 19, 2014, Board meeting minutes in the manner required by section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2012)). [REDACTED] also alleged that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) by requiring meeting attendees to provide a name and address on a comment card prior to addressing the Board and by granting the Board President the discretion to "determine procedural matters regarding public participation not otherwise covered in Board policy."¹ On July 15, 2014, this office forwarded the Request for Review to the Board and asked it to address [REDACTED] allegations. On August 20, 2014, this office received the Board's response

Section 2.06(b) of OMA provides, in relevant part, that "[a] public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later." In its response to this office, the Board

¹E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (May 30, 2014) (quoting Lemont-Bromberek Combined School District No. 113A Board of Education Policy 2:230).

██████████
Mr. James A. Petrungaro
January 29, 2019
Page 2

acknowledged that it did not approve the minutes of its March 19, 2014, meeting until June 18, 2014,² which was the third subsequent meeting after the March 19, 2014, meeting. Although the Board has acknowledged that the March 19, 2014, meeting minutes were not approved in a timely manner, because the Board has since approved those meeting minutes, no further action is necessary at this time to remedy its violation of section 2.06(b).

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules, or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules but those rules unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7.

██████████ Request for Review asked this office to evaluate the propriety of the Board's public comment rules absent a specific complaint that the Board enforced those rules to improperly prevent a member of the public from addressing public officials at a meeting. Because the Request for Review did not allege that any member of the public was improperly prohibited from addressing the Board, this office concludes that ██████████ has not provided facts supporting the allegation that the Board violated section 2.06(g) of OMA. Accordingly, this office concludes that this portion of ██████████ Request for Review is unfounded. *See* 5 ILCS 120/3.5(a) (West 2012) (requiring a Request for Review to provide a summary of facts supporting the allegation that a public body violated OMA).

Nonetheless, this office is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7 (West 2016). In that capacity, this office notes that "the primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. The Attorney General has issued a binding opinion concluding that a rule requiring members of the public to announce their home addresses prior to speaking would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g): "[T]he language of section 2.06(g) does not support a requirement that a person must provide his or her complete home address prior to being allowed to make a public comment. * * * Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014,

²Board of Education Lemont-Bromberek Combined School District No. 113A, Meeting, June 18, 2014, Minutes 2.

[REDACTED]
Mr. James A. Petrunaro

January 29, 2019

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at 6-7; *see also* Ill. Att'y Gen. PAC Rev. Ltr. 37391, issued January 11, 2016, at 6 (concluding that "it is unclear how requiring a speaker to submit his or her address or telephone number on a form before addressing the Board advances any significant governmental interest.").

Accordingly, if the Board still has and enforces a rule that requires individuals who wish to address the Board to identify themselves by address on a form submitted to the Board President, this office advises the Board to review and revise its rules for public comment to ensure that they uphold the public's statutory right to address the Board while implementing only those reasonable limitations that are necessary to advance significant governmental interests, such as maintaining order and decorum.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us.

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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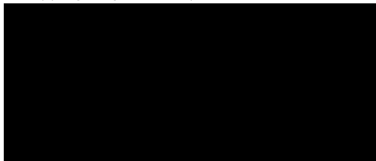


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 29, 2019

Via electronic mail



Via electronic mail

The Honorable Gregg Humphrey
President, Board of Education
Pleasant Plains Community Unit School District No. 8
315 West Church, P.O. Box 20
Pleasant Plains, Illinois 62677
ghumphrey@ppcusd8.org

RE: OMA Request for Review – 2018 PAC 52862

Dear [REDACTED] and Mr. Humphrey:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Pleasant Plains Community Unit School District No. 8 (District) Board of Education (Board) violated OMA in connection with its February 26, 2018, March 26, 2018, and April 23, 2018, meetings.

BACKGROUND

On April 26, 2018, this office received [REDACTED] Request for Review alleging that during the closed session portions of its February 26, 2018, March 26, 2018, and April 23, 2018, meetings, the Board may have held unauthorized discussions under the pending litigation exception found in section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.)). In support of her allegations, [REDACTED] contended that because no litigation is known to be pending against the District, the Board's discussions must not have fallen within the scope of that exception. On April 30, 2018, this office sent a copy of the Request for Review to the Board and requested that the Board or its representative provide a written response to the allegations in the

[REDACTED]
The Honorable Gregg Humphrey
January 29, 2019
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Request for Review and to provide certain information and records for this office's review. On May 10, 2018, the Board provided an answer and the requested materials. On May 14, 2018, this office forwarded the Board's answer to [REDACTED] she did not reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(c)(11) of OMA

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA. Section 2(c)(11) provides an exception for the discussion of:

Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2016)).

Section 2(c)(11) of OMA permits public bodies to discuss "probable or imminent" litigation in closed session, but "there must be reasonable grounds to believe that a lawsuit is more likely than not to be instituted or that such an occurrence is close at hand[.]" and such a determination must be made "by examining the surrounding circumstances in light of logic, experience, and reason." 1983 Ill. Att'y Gen. Op. No. 26, issued December 23, 1983, at 10. In *Henry v. Anderson*, 356 Ill. App. 3d 952, 956-57 (4th Dist. 2005), the Illinois Appellate Court strictly construed the section 2(c)(11) exception, stating:

If the litigation has not yet been filed, the public body must (1) find that the litigation is probable or imminent and (2) record and enter into the minutes the basis for that finding. Evidently, the legislature intended to prevent public bodies from using the distant

possibility of litigation as pretext for closing their meetings to the public.

The court then concluded that the school board violated OMA by entering closed session without clarifying whether the "litigation" to be discussed was pending or "by failing to state, on the record, (1) a finding that litigation was probable or imminent and (2) a basis for such a finding." *Henry*, 356 Ill. App. 3d at 957. Furthermore, in Ill. Att'y Gen. Pub. Acc. Op. No. 16-007, issued September 13, 2016, the Attorney General analyzed the section 2(c)(11) exception at length in concluding:

[T]he section 2(c)(11) exception does not permit a public body to enter closed session to discuss the possibility of litigation merely because it has taken action that generated public opposition, such as a backdoor referendum effort. In the absence of reasonable, specifically identified grounds to believe that litigation was close at hand or more likely than not to ensue, the mere possibility that a lawsuit might be filed does not constitute "probable" or "imminent" litigation within the scope of section 2(c)(11) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 16-007, at 8.

This office has reviewed the verbatim recordings and closed session minutes for the February 26, 2018, March 26, 2018, and April 23, 2018, meetings, and finds that the minutes do not contain findings that litigation was probable or imminent, as is expressly required by section 2(c)(11). The February 26, 2018, and April 23, 2018, closed session minutes make no reference to litigation; the March 26, 2018, closed session minutes include the term "pending litigation," but include neither a citation to any pending case nor any finding by the Board that litigation was probable or imminent. Instead, the minutes of the closed sessions and the verbatim recordings reflect that the Board discussed a drainage issue that was once the subject of threatened litigation. The Board explained in its letters to this office that no litigation was ever filed and the person who had threatened to sue passed away before the meetings at issue. At most, the Board's discussions concerned the *possibility* of litigation. Accordingly, the Board violated section 2(a) of OMA by holding improper closed session discussions during its February 26, 2018, March 26, 2018, and April 23, 2018, meetings.

To remedy this violation, this office asks the Board to vote to disclose the portions of the February 26, 2018, March 26, 2018, and April 23, 2018, closed session minutes and closed session verbatim recordings that document the Board's discussion of the drainage issue, provide [REDACTED] with copies of those materials, and make those materials available to the public.

In its response to this office, the Board explained that it has discussed [REDACTED] Requests for Review during its closed sessions. This office confirms that the Board discussed a pending Request for Review during the closed session of its February 26, 2018, Board meeting. This office has previously found "that a Request for Review constitutes 'litigation' pending before an 'administrative tribunal' [as contemplated by section 2(c)(11) of OMA] during the time period within which the matter may be resolved by the issuance of a binding opinion." Ill. Att'y Gen. PAC Rev. Ltr. 46034, issued August 2, 2017, at 3. Under section 3.5(e) of OMA, a binding opinion must be issued within 60 days of receipt of a Request for Review unless that time period is extended by not more than 21 business days. The Board did not identify, either in its response to this office, the verbatim recording, or the closed session minutes, which Request for Review it discussed during its February 26, 2018, meeting, but at that time, [REDACTED] had only one Request for Review pending with this office, 2017 PAC 50963. This office received that Request for Review on December 21, 2017. Under section 3.5(e) of OMA, this office had until February 19, 2018, to issue a binding opinion in 2017 PAC 50963, and this office did not issue a 21-day extension pursuant to section 3.5(e). Accordingly, the February 26, 2018, meeting occurred after the period in which the Attorney General was authorized to issue a binding opinion.

However, [REDACTED] Request for Review in 2017 PAC 50963 required extensive clarification¹ and evaluation before this office could determine if further action was warranted. As a result, this office did not seek a response to the Request for Review from the Board until February 5, 2018. The Board timely responded on February 14, 2018, and the first Board meeting after it received notice of the Request for Review was February 26, 2018. Because the Board did not have an opportunity to discuss the Request for Review at a regular, monthly Board meeting during the 60-day time period in which the Attorney General could have issued a binding opinion, this office declines to conclude that the Board's February 26, 2018, closed session discussion violated OMA.

[REDACTED] further alleged that the Board "failed to provide the additional information required by OMA when citing 'threatened or pending litigation'"² for the February 26, 2018, March 26, 2018, and April 23, 2018, meetings. Section 2(c)(11) of OMA requires a public body to record and enter a basis for the finding that litigation is probable or imminent into

¹See E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (December 22, 2017); E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (December 23, 2017); E-mails between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of Illinois Attorney General, and [REDACTED] (January 3, 2018 – January 8, 2018); E-mails between Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of Illinois Attorney General, and [REDACTED] (January 10, 2018 – January 11, 2018).

²E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (April 26, 2018), at 1.

the minutes of a *closed meeting*; there is no requirement to disclose the findings discussed in closed session in open session or in open session minutes. Indeed, such a requirement would defeat the purpose of the confidential discussion. Accordingly, this office concludes that the Board did not violate OMA by not including findings of probable or imminent litigation in its open session minutes or during the open session of its meetings.

Section 2a of OMA


[REDACTED] appears to allege that the Board's minutes for its February 26, 2018, and March 26, 2018, meetings do not include a sufficient description of the closed session discussions during those meetings. Section 2a of OMA describes the procedure for entering into closed session. It provides, in relevant part, that

[t]he vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting.

This office has reviewed the regular session minutes provided by the Board for its February 26, 2018, March 26, 2018, and April 23, 2018 meetings, and found that the Board did not include a citation to the specific exceptions contained in section 2 of OMA that authorized the closing of the meetings. Further, the Board has not disputed [REDACTED] allegation that it did not adequately identify the exceptions at the time it voted to enter closed session. Accordingly, this office concludes that the Board violated section 2a of OMA. This office requests that the Board amend its February 26, 2018, March 26, 2018, and April 23, 2018, meeting minutes to include the citations to the specific exceptions that authorized the closing of its meetings on those dates.

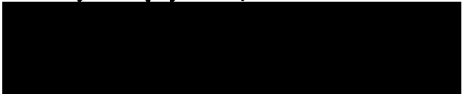
Other Allegations

[REDACTED] also alleged that during the closed session of the Board's February 26, 2018, and April 23, 2018, meetings, it discussed responses to her February 18, 2018, and April 9, 2018, FOIA requests, respectively. This office has reviewed the verbatim recordings of these closed sessions and did not identify any references to [REDACTED] FOIA requests.


The Honorable Gregg Humphrey
January 29, 2019
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (217) 524-7958 or LHarter@atg.state.il.us. This letter serves to close this file.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
Mr. Eric L. Grenzebach
Brown Hay & Stephens
205 South 5th Street, Suite 700
P.O. Box 2459
Springfield, Illinois 62705
elg@bhslaw.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

January 31, 2019

Via electronic mail

Mr. Kevin DuJan
Story Time Digital Media
storytimewithmeganfox@gmail.com

Via electronic mail

The Honorable Patrick Horcher
President, Board of Trustees
Village of Wheeling
2 Community Boulevard
Wheeling, Illinois 60090
phorcher@wheelingil.gov

Via electronic mail

Ms. Mallory A. Milluzzi
Village Attorney
Klein, Thorpe and Jenkins, LTD.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
mamilluzzi@ktjlaw.com

Re: OMA Request for Review – 2017 PAC 49820

Dear Mr. DuJan, Mr. Horcher, and Ms. Milluzzi:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Village of Wheeling (Village) Liquor Control Commission (Commission) and the Village Board of Trustees (Board) did not violate OMA in connection with their September 18, 2017, meetings.

Mr. Kevin DuJan
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
January 31, 2019
Page 2

On September 26, 2017, Mr. Kevin DuJan filed this Request for Review alleging that the Commission and Board violated OMA at their September 18, 2017, meetings. Specifically, he asserted that the Village president and the Village attorney improperly restricted Mr. DuJan and another member of the public, Ms. Deborah Wilson, from addressing the Board by repeatedly interrupting their public comments. He also alleged that the Commission improperly restricted Ms. Wilson's ability to comment at this meeting based on the topic that she wished to address and attempted to do the same to him. Mr. DuJan's Request for Review also contends that the Village's rules for public comment do not comply with section 2.06(g) of OMA (5 ILCS/120/2.06(g) (West 2016)).

On October 13, 2017, this office forwarded a copy of the Request for Review to the Village and requested that it provide a copy of any established and recorded Village rules governing public comment during meetings, and copies of the agenda, open session minutes, and any audio or video recordings of the September 18, 2017, Commission and Board meetings along with a written response to the allegations in this Request for Review.

On October 24, 2017, this office received a written response with links to the Village Code (Code) and video recordings of the Board and Commission meetings at issue. This office also received the public comment sign-in sheets for both the Board and Commission meetings as well as a copy of the draft meeting minutes for the Commission meeting.¹ On October 25, 2017, this office forwarded a copy of the Village's written response to Mr. DuJan; he did not reply. On June 29, 2018, Mr. DuJan informed this office that he had not received a copy of the written response by the Village and indicated that he would like a chance to reply. On that date, this office forwarded a copy of the Village's written response to Mr. DuJan; he did not reply.

BACKGROUND

On September 18, 2017, the Commission, a held a special meeting that began at 6:30 p.m., the substance of which was to discuss a particular request for a liquor license. The members of the Commission consist of the Village President and the members of the Board.²

¹Although the written response indicated that agendas for the September 18, 2017, Commission and Board meetings, and the meeting minutes for the Village's meeting accompanied the written response, this office did not receive paper copies of those materials. Instead, in an October 24, 2017, e-mail from counsel for the Village, links to the Village's website where those materials could be retrieved was provided. See e-mail from Mallory A. Milluzzi, Associate Attorney, Klein, Thorpe & Jenkins, Ltd. to [Shannon] Barnaby, [Assistant Attorney General], [Public Access Bureau], [Office of the Illinois Attorney General] (October 24, 2017).

²Wheeling Municipal Code §4.32.030(a) (amended April 19, 2010).

Mr. Kevin DuJan
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
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Page 3

However, according to chapter 4.32 of the Code, when acting in this capacity, the Commission members have very limited authority. Specifically, section 4.32.030(b) of the Code provides, "[w]hen sitting as the liquor control commission, the members of the corporate authorities may exercise no authority other than the liquor control powers in accordance with this Chapter [which exclusively deal with licenses for alcoholic liquors]."³ The Board held its regular meeting immediately following the Commission's special meeting.

It is undisputed that the Village has established and recorded rules governing public comment for both the Commission and the Board, and that both the Commission and the Board provided an opportunity for public comment during their meetings. Therefore, this office reviews the rules that were enforced during the September 18, 2017, meetings in terms of their reasonableness and the asserted significant governmental interest.

DETERMINATION

Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Although OMA does not specifically address the types of rules that a public body may adopt, public bodies may generally promulgate reasonable "time, place and manner" regulations that are necessary to further a significant governmental interest. *See, e.g., I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (examining whether the application of city council's rules for public comment violated plaintiffs' rights). "City Councils have legitimate reasons for having rules to maintain decorum at public meetings[]" and "to assure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008).

Public Comment at the Commission Meeting

In relevant part, the Village's rules governing public comment at Commission meetings states:

Members of the general public may address all village committees, *commissions*, boards, and any and all other subsidiary boards established by the village board or Village Municipal Code * * * with concerns or comments regarding *issues relevant to that specific board, committee or commission's agenda or topics that*

³Wheeling Municipal Code §4.32.030(b) (amended April 19, 2010).

Mr. Kevin DuJan
The Honorable Patrick Horcher
Ms. Mallory A. Milluzzi
January 31, 2019
Page 4

the specific board, committee, or commission has the authority, pursuant to the Village Code, to address. The chairperson or his or her designee shall strictly restrain comments to matters that are relevant to the board's, committee's, or commission's business and shall not permit repetitious comments or arguments.^[4]
(Emphasis added.)

This office has reviewed a recording of the public comment portion of the Commission's September 18, 2017, meeting.⁵ The recording of the meeting shows that Ms. Wilson addressed the Commission with concerns about renewing a funeral home's liquor license. Ms. Wilson then began to address her disagreement with an appointment to the Village's Board of Police and Fire Commissioners. During this portion of her public comment, she was interrupted by the Village's president, Mr. Patrick Horcher. Mr. Horcher informed Ms. Wilson that this topic was not relevant to the business of the Commission because it did not have authority over the Board of Police and Fire Commissioners but that she would have the opportunity to speak about this topic before the Board at its meeting, which Mr. Horcher stated would begin in approximately five minutes. Ms. Wilson disagreed with Mr. Horcher's authority to limit her speech and she attempted to argue that she was permitted to speak about any topic when the Village Attorney interrupted her and explained that the above-cited rule prohibited her comment on that topic. Ms. Wilson then left the podium.

Next, Mr. DuJan was called and walked up to a podium set in front of the Commission members. Mr. DuJan provides Mr. Horcher with a book, which he stated contained information about the law firm with which the Village Attorney is affiliated, he then began addressing the Commission about his perceived failings of the Village Attorney and his dislike of this law firm. During Mr. DuJan's public comment, Mr. Horcher, the Village Attorney, and Mr. DuJan repeatedly spoke over one another. Mr. Horcher and Village Attorney informed Mr. DuJan that the topic was not relevant to the business of the Commission but that he could address the matter at the Board meeting, and they indicated that they were attempting to enforce the Village's public comment rules. Mr. DuJan continued his public comment stating that the Commission was violating OMA because OMA permitted him to speak about anything he wanted, and he continued to cite his concerns about the law firm. Mr. DuJan then completes his comments and leaves the podium to return to his seat.

⁴Wheeling Municipal Code §2.03.060(b) (amended May 15, 2017), *available at* https://library.municode.com/il/wheeling/codes/code_of_ordinances

⁵Wheeling Liquor Control Commission, Meeting, September 18, 2017, *available at* <http://www.wheelingil.gov/659/Board-Meeting-Video-9-18-2017>.

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The Village's response to this office asserted that the relevancy rule imposed upon Mr. DuJan and Ms. Wilson at the September 18, 2017, Commission meeting was reasonable and served a significant governmental interest. Specifically, the Village stated:

Here, the Village's rules and regulations are content and viewpoint neutral and serve the significant government interest of maintaining civility and decorum.

* * *

The significant interest of effectively conducting a meeting is particularly true for a subsidiary body. A Commission like the Liquor Control Commission has extremely limited authority and a limited, narrow purpose. Allowing public comment on any and all topics at Liquor Commission meetings would, and does, interfere with the orderly and effective action of the Village Board meeting. In fact, at the September 18, 2017 Liquor Control Commission meeting, Chairperson Horcher pointed out that the actual business of the Liquor Commission would take less time than the public comment portion. Additionally, as repeatedly told to Mr. DuJan and Ms. Wilson, they were able to talk about those topics, namely the qualification of Village attorneys and appointments to the BOFPC [Board of Police and Fire Commissioners], at the Village Board meeting that immediately followed the Liquor Control Commission meeting. The Village Attorney indicated to Mr. DuJan that he would be able to make all of his comments about the Village Attorney and the law firm representing the Village when the Village Board meeting began in less than five minutes. Thus, speakers have ample alternative means of communication.^[6]

In his Request for Review, Mr. DuJan contends that OMA requires a public body to allow members of the public to "speak about whatever they want to speak about[]"⁷ during the public comment portion of a meeting.

⁶Letter from Mallory A. Milluzzi, Village Attorney, Klein, Thorpe and Jenkins, LTD., to Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (October 24, 2017).

⁷E-mail from Kevin DuJan, Story Time Digital Media to Public Access Counselor (September 26, 2017).

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This office has previously determined that a rule which limits members of the public to only provide comments related to subjects listed on the agenda exceeded the scope of permissible rulemaking authorized by section 2.06(g). *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037*, issued August 1, 2016; *Ill. Att'y Gen. PAC Req. Rev. Ltr. 45349*, issued March 16, 2017. These determinations, however, do not support the contention that participants have complete freedom during the public comment portion of an open meeting to provide comment on any issue that one wishes. Instead, this office emphasized that under section 2.02(a) of OMA (5 ILCS/120/2.02(a) (West 2016)), the public body itself is able to discuss *matters concerning the business of the public body* that are not specifically listed on the agenda, and therefore, it would be unreasonable to prohibit members of the public from doing so. *Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037*, issued August 1, 2016, at 3; *Ill. Att'y Gen. PAC Req. Rev. Ltr. 45349*, issued March 16, 2017, at 6.

Moreover, courts have consistently recognized an important governmental interest in limiting comments to matters directly relevant to that public body's business. *See, e.g., Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1373 (D. Kan. 1998) (city council did not violate first amendment to the United States Constitution by restricting personal comments about an appointee to a mayoral commission that were not directly relevant to the business of the public body). Requiring a public body to permit public comment on matters unrelated to its public business would impede the public body's ability to run efficient meetings. *See Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 803 (11th Cir. 2004) ("a city council meeting is not open for endless public commentary speech but instead is simply a limited platform to discuss the topic at hand.").

As the Commission has described in its response, the Commission has very limited authority and purpose, which is restricted solely to matters related to licenses for alcoholic liquors. The Commission does not have the authority to discuss, or make decisions, regarding neither the appointment of the Village attorney nor the appointment of commissioners to the Board of Fire and Police Commissioners. In this case, the video recording shows that the Commission restricted Ms. Wilson and Mr. DuJan's comments only when they spoke about topics that were not relevant to the business of the Commission, in any way. Accordingly, this office concludes that the Commission did not violate OMA by enforcing section 2.03.060(b) of the Code to limit public comment to matters that were germane to matters that the Commission has the authority to consider.

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Public Comment at Board Meeting

Section 2.03.060(a) of the Code contains the pertinent Village rule governing public comment at Board meetings, and provides:

- (a) Citizen Concerns and Comments at Village Board Meetings. *Members of the general public may address the board with concerns or comments regarding issues relevant to village business. Issues relevant to village business are defined to mean information about village events; issues that the public body has the authority to address; items listed on the agenda; and items or issues previously voted on by the village board or that the village board has the authority to consider or vote on in the future.* The village president or his designee shall strictly restrain comments to matters that are relevant to village business and shall not permit repetitious comments or arguments. Members of the general public who wish to address the board must sign the request to speak form prior to the commencement of the public meeting. *The persons submitting a petition, concern or other comment shall be allotted five minutes to present their points.* The manager or corporate authorities may respond for the village.
(Emphasis added.)

This office has reviewed a recording of the public comment portion of the Board's September 18, 2017, meeting.⁸ Summarized, the recording of the meeting shows that Ms. Wilson addressed the Board concerning an alleged home invasion in 2013. Ms. Wilson begins to discuss a private physician that allegedly has personal ties with particular board members, Mr. Horcher can be heard briefly interrupting Ms. Wilson asking that she keep her public comments relevant to Village business. After approximately five minutes, an alarm can be heard at which point Mr. Horcher informs Ms. Wilson that her five minutes to address the Board had expired. Ms. Wilson continued speaking while Mr. Horcher reminded her several times that the five-minute bell had rung. Ms. Wilson finished her comments and left the podium. Next, Mr. DuJan addressed the Board about certain aspects of previous Board meetings that Mr. DuJan believed violated the constitution, ancient Greek mythology, his perceived failings of the Village Attorney, and his dislike of that law firm. At no point was

⁸Wheeling Liquor Control Commission, Meeting, September 18, 2017, available at <http://www.wheelingil.gov/659/Board-Meeting-Video-9-18-2017>.

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Mr. DuJan interrupted. After approximately five minutes, an alarm can be heard at which point Mr. Horcher informed Mr. DuJan that his five minutes to address the Board had expired. Mr. Horcher asked Mr. DuJan to wrap up his comments, which Mr. DuJan did.

Based on our review of the recording, this office is unable to conclude that Mr. Horcher's brief interruption of Ms. Wilson during the Board's September 18, 2017, meeting deprived her of an opportunity to fully address the Board. The recording established that Ms. Wilson was permitted to address the Board and provide public comment, and that the brief interruption did not prevent Ms. Wilson from continuing to address the Board until after the five-minute bell rang. This office has previously determined that a temporary interruption that does not preclude a speaker from completing his or her public comment does not constitute an improper restriction on public comment. Ill. Att'y Gen. PAC Rev. Ltr. 37496, issued on December 11, 2015, at 3.

Additionally, this office's review of section 2.03.060(a) of the Code confirmed that the Board's established public comment rules limit a person's comments to five minutes. The Attorney General has previously determined that "a public body may legitimately prescribe reasonable time limits for public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Because the Village's established and recorded rules permit the Board to limit a person's comments to five minutes, and because such a rule appears designed to advance a significant governmental interest in holding orderly and efficient meetings, this office concludes that Board did not violate section 2.06(g) of OMA by enforcing the five-minute public comment rule at the September 18, 2017, meeting. Accordingly, the Public Access Bureau concludes that the Board did not violate section 2.06(g) of OMA during its September 18, 2017, meeting.

Additional Complaints about Public Comment Rules


Although Mr. DuJan's Request for Review alleges that the entirety of the Village's rules governing public comment run afoul of section 2.06(g), the Public Access Bureau generally reviews a particular rule governing public comment only if there is an allegation that a member of the public has been prohibited from speaking at a meeting because of that rule, as opposed to evaluating the propriety of all rules absent a specific complaint that the rules prevented a member of the public from addressing officials at a meeting. Accordingly, this office emphasizes that a determination by this office that one of a public body's rules for public comment violates, or does not violate, OMA cannot be extrapolated to mean that other rules that were not specifically addressed would, or would not, pass muster.

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Also, please note that the Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) and OMA. *See* 15 ILCS 205/7(c) (West 2016). To the extent Mr. DuJan's Request for Review alleges violations of laws other than FOIA or OMA, the Public Access Counselor does not have authority to review those allegations.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me by mail at the Chicago addresses listed on the first page of this letter, by phone at (312) 550-4480, or by e-mail at sbarnaby@atg.state.il.us.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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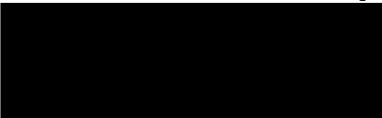
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 31, 2019

Via electronic mail

The Honorable Steven R. Springer



Via electronic mail

The Honorable John Wagon, President

Board of Education

O'Fallon Community Consolidated School District No. 90

118 East Washington Street

O'Fallon, Illinois 62269

jwagon@of90.net

RE: OMA Request for Review – 2018 PAC 53781

Dear Mr. Springer and Mr. Wagon:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the O'Fallon Community Consolidated School District No. 90 (District) Board of Education (Board) did not violate OMA in connection with an e-mail statement issued on May 17, 2018.

BACKGROUND

On June 28, 2018, this office received Mr. Steven Springer's Request for Review alleging that six Board members discussed and coordinated via e-mail the drafting of a May 17, 2018, statement to the parents and students in the District. On July 3, 2018, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to Mr. Springer's allegations. This office asked the Board to identify any and all discussions and communications that occurred between and among Board members outside of open meetings concerning the May 17, 2018, e-mail statement referenced in Mr. Springer's Request for Review. This office requested copies of any records that documented those discussions, as well as copies

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of any records of communications, such as e-mails and text messages. This office also asked the Board to address whether it took improper final action regarding the May 17, 2018, e-mail statement. On July 11, 2018, the Board provided a written response and the requested materials. On July 25, 2018, Mr. Springer replied. On November 28, 2018, and December 6, 2018, in response to follow-up inquiries from this office, the Board provided additional materials.

According to the background information provided by the parties, Mr. Springer made comments at an April 15, 2018, O'Fallon City Council meeting "on the intended audience [for the reading of a children's book] and the possible improper use of a publically funded facility."¹ Many members of the public were outraged by Mr. Springer's comments. According to a news report, hundreds of people attended the Board's May 15, 2018, meeting, many of whom spoke during the public comment periods to share their thoughts on Mr. Springer's statements.² One member of the public read excerpts from copies of Mr. Springer's e-mails in which he questioned school policy concerning the needs of transgender and other students. The comments in Mr. Springer's e-mails added to the growing public controversy. On May 17, 2018, six Board members issued an e-mail statement to local news media outlets, District staff, and parents, as follows:

As a leader in public education, District 90 teaches tolerance, acceptance, and kindness from the moment our students walk into our classrooms. As Superintendent Hruby stated, "Each and every school day, one can witness students being encouraged to explore and grow their own strengths, but perhaps more importantly, to find strengths in one another by embracing our differences."

We, as Board members, believe it is the responsibility of public education in America to be the great equalizer--to offer opportunities for all children to succeed. To that end, authority is granted to the elected officials of the Board of Education as a whole, not to each member individually, to make decisions for the betterment of all students. Mr. Springer is one member of the Board of Education. When he voiced his opinions, his voice was his alone. Furthermore we do not agree with nor support the

¹Letter from Steven Springer to Laura S. Harter, Assistant Attorney General, Public Access Bureau (July 18, 2018), at 1.

²Robyn L. Kirsch, *Emails fuel call for resignation of O'Fallon school board member 'branded as a racist'*, BELLVILLE NEWS-DEMOCRAT, May 16, 2018, <https://www.bnd.com/news/local/community/ofallon-progress/article210776579.html>.

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comments made in the released emails and will not endorse discriminatory policies of any kind.^{3]}

DETERMINATION

Alleged Violation of Meeting Requirements

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2017 Supp.)) provides that "[a]ll *meetings* required by this Act to be public shall be held at specified times and places which are convenient and open to the public." (Emphasis added.) In addition, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) generally requires a public body to provide the public with at least 48 hours advance notice of its meetings. In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)):

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Under this statutory definition, a "meeting" may include communications through e-mail or other electronic means. The Board is comprised of seven members. Accordingly, four Board members constitute a quorum, and a majority of the quorum is three members. Therefore, contemporaneous, interactive e-mail or other electronic communications involving at least three members of the Board which concern "public business" would ordinarily constitute a meeting of the Board which would be subject to the procedural safeguards and requirements of OMA.

OMA does not define "interactive" or "contemporaneous." In interpreting statutes such as OMA, undefined statutory terms must be afforded their "plain, ordinary, and popular meanings[,]" which may be gleaned from dictionaries. *See, e.g., Valley Forge Insurance Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 366 (2006).

³Letter from S. Jeff Funk to Ms. Laura S. Harter, Assistant Attorney General, Public Access Bureau (July 11, 2018), Attachment 3.

"Interactive" is defined, in relevant part, as "mutually or reciprocally active."⁴ This office has reviewed the e-mails concerning the May 17, 2018, statement. Most of the e-mails included only one Board member interacting with a non-Board member.⁵ Other e-mails included two Board members⁶ or two Board members and a non-Board member.⁷ A third Board member was copied on some of these e-mails, but never participated in the e-mail exchanges with the other two Board members.⁸ Certain e-mails were sent to five or six Board members,⁹ but no more than two Board members replied to all recipients on those e-mail strings.¹⁰ Importantly, none of the e-mail strings provided to this office regarding the draft statement included three Board members engaged in interactive communications by responding to each other's e-mails.

One e-mail string provided by the Board that did not involve drafting the statement did involve "interactive" communications, as three Board members interacted with each other over the course of three messages.¹¹ Whether the e-mails constituted a meeting under OMA depends on whether the messages were also "contemporaneous." "Contemporaneous" is defined as "existing, occurring, or originating during the same time."¹² The Public Access Bureau has noted previously that "Illinois' appellate courts have not yet been called upon to

⁴Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/interactive> (last visited December 4, 2018).

⁵OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachments 3, 4, 5, 6, 7, 15, 16a, 17, 18.

⁶OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachment 9a, 21. *See also* OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachment 22 (e-mail messages that do not concern the May 17, 2018, statement).

⁷OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachments 1, 9, 14.

⁸OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachment 11.

⁹OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachments 2, 8.

¹⁰OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachments 13, 16.

¹¹OMA—Request for Review by Public Access Counselor submitted by Steven Springer (June 24, 2018), Attachment 19.

¹²Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/contemporaneous> (last visited December 5, 2018).

decide how close in time electronic communications must be in order to be 'contemporaneous,' for purposes of OMA; nor does the legislative history of the statutory language provide any guidance in defining 'contemporaneous.'" Ill. Att'y Gen. PAC Req. Rev. Ltr. 18676, issued September 9, 2013, at 3 (quoting Ill. Att'y Gen. PAC Req. Rev. 17172, issued September 7, 2012, at 3). A "contemporaneous interactive communication" occurs in the same general time frame, but is not necessarily simultaneous. Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, issued August 12, 2011, at 4 (citing John H. Brechin, *E-mail and the Open Meetings Act*, Illinois Bar Journal, 94 ILBJ 666, 667 (2006)). In prior matters, this office determined that we could not conclude that e-mails sent over a period of hours or longer were "contemporaneous" as a matter of law. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39667, issued February 18, 2016 (e-mails separated by more than an hour, in the case of one, and more than two days, in the case of another, were not contemporaneous); Ill. Att'y Gen. PAC Req. Rev. Ltr. 18676, issued September 9, 2013, at 3 (e-mail responses sent hours apart did not constitute contemporaneous, interactive discussions of public business); Ill. Att'y Gen. PAC Req. Rev. 17172, issued September 7, 2012, at 3 (e-mail responses sent hours or days after initial e-mail were not contemporaneous). *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 40976, issued August 24, 2016, at 3 (unable to conclude that "text messages that may have stretched over a period over two hours" constituted contemporaneous communications).

Here, the first two messages in the e-mail string were sent only four minutes apart, but the third message was not sent until more than an hour and a half later. As one of the three e-mails was sent more than an hour after the first two messages, this office cannot conclude that the e-mail string constituted a "contemporaneous interactive communication." Accordingly, this office concludes that none of the e-mail strings provided to this office by the Board constituted a "meeting" subject to the requirements of OMA.

Final Action Outside of an Open Meeting

Section 1 of OMA (5 ILCS 120/1 (West 2016)) provides:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly.

With respect to final action by a public body, section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.)) provides: "No final action may be taken at a closed meeting. Final

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action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

The Appellate Court has held that when a public body finalizes a decision in a document, that final action must be taken openly:

No public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly. Imagine, for instance, the legal problems if the Chicago city council "adopted" ordinances by publicly voting on a concept that had never been reduced to writing, directed a staff attorney to prepare it in a more detailed written form, circulated the final version around city hall for signatures of a majority of the 50 alderman, and then ordered the city clerk to publish it as if it were a valid legislative act. *Howe v. Retirement Bd. of Firemen's Annuity & Benefit Fund of Chicago*, 2013 IL App (1st) 122446, ¶26, 996 N.E.2d 664, 974-75 (2013) (finding board's written denial of benefits invalid because the board had circulated the decision for signatures privately rather than voting on it in open session).

Further, this office has previously determined that a board violated section 2(e) of OMA by improperly taking final action when four of five board members signed a letter in support of a wage ordinance without publicly discussing the letter prior to its signing. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 21599, issued March 19, 2013, at 2.

Mr. Springer argues that the act of issuing a statement is a final action. He contends that the statement pertained to the business of the Board because its purpose was to clarify the Board's position on a contentious public issue. The Board does not dispute that it issued the statement without discussing or voting on it at an open meeting. However, the Board asserts that because Mr. Springer's controversial comments did not involve Board business, the Board's statement concerning Mr. Springer's comments cannot be characterized as involving Board business. The Board also noted that the Board members did not make any decisions regarding Mr. Springer's comments other than to issue the statement.

It is undisputed that Mr. Springer's comments resulted in significant public controversy. Six members of the Board determined that they would address the public's concerns by issuing a statement expressing a general sentiment of unity and disavowing Mr. Springer's comments. Contrary to Mr. Springer's assertion that issuing a statement on a contentious public issue is always a final action under OMA, this office has found that issuing a

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statement clarifying a public body's position is not necessarily a final action. Specifically, this office concluded that a letter sent by all trustees of a public body that sought to clarify the public body's position on an issue was not a final action. *See* Ill. Att'y Gen. PAC Rev. Ltr. 50318, issued January 30, 2018, at 6. This office found that:

the letter summarizes past discussions that have been held during open sessions at various Board meetings and the deliberations that occurred during the Township Annual Meeting concerning on-going issues related to Township funds. Further, it does not appear from the letter, or the meeting minutes, that the Board has come to a decision on how to handle the funds at issue. Therefore, this letter cannot be characterized as a "final action" by the Board. Ill. Att'y Gen. PAC Rev. Ltr. 50318, issued January 30, 2018, at 6.

Similarly, here, the May 17, 2018, e-mail statement is not a final action. Most of the e-mail consists of factual or philosophical statements, none of which can be construed as asserting a new policy or deciding a Board matter. The final sentence, "[f]urthermore we do not agree with nor support the comments made in the released emails and will not endorse discriminatory policies of any kind,"¹³ reflects the only definitive positions taken by the members: that they disagree with Mr. Springer's comments, and that they will not endorse discriminatory policies. Mr. Springer's e-mail comments are his opinions, none of which are binding on the Board. Likewise, the six members' expression of disagreement is a statement of opinion that has no binding effect on the Board and does not resolve any matter of Board business. Even if the opinion could be considered relevant to Board policy accommodating transgender students, the opinion was merely an interim decision on a Board matter, and this office has found that interim decisions do not constitute final action. *See* Ill. Att'y Gen. PAC Rev. Ltr. 54002, issued October 22, 2018, at 8 (concluding that a University Board of Trustees' decision to publically voice its support for an individual to become University President was an interim decision at the time of the Request for Review, rather than a final action).

Further, stating that the members would not endorse any discriminatory policies is not an assertion of a new policy position, as promising not to discriminate is a fundamental

¹³Letter from S. Jeff Funk to Ms. Laura S. Harter, Assistant Attorney General, Public Access Bureau (July 11, 2018), Attachment 3.

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obligation of public service. In their oaths of office,¹⁴ all seven Board members implicitly vowed not to support discriminatory policies by swearing to act in accordance with the equal protection clauses of the United States¹⁵ and Illinois Constitutions.¹⁶

In sum, the May 17, 2018, e-mail statement did not constitute final action, as it did not put forth a new Board position, nor was it binding on any Board business. Accordingly, this office concludes that the Board did not improperly take final action outside of a public meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958. This letter serves to close this file.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
Mr. S. Jeff Funk
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter
Monticello, Illinois 61856
jfunk@millertracy.com

¹⁴The Board members' oath provides: "I, (name), do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of member of the Board of Education of O'Fallon Community Consolidated School District No. 90, in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and the laws of the State of Illinois, to the best of my ability." O'Fallon Community Consolidated School District No. 90, Board Policy Manual, §2:80 Board Member Oath and Conduct.

¹⁵U.S. Const., amend. XIV, §1.

¹⁶Ill. Const. 1970, art. I, §2.

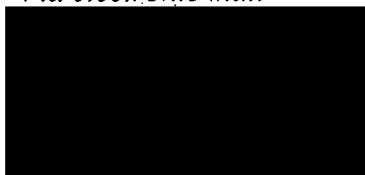


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 1, 2019

Via electronic mail



Via electronic mail

Mr. David J. Kurlinkus
Chief of Staff and Civil Bureau
Winnebago County State's Attorney's Office
400 West State Street, Suite 619
Rockford, Illinois 61101
statesattorney@co.winnebago.il.us

RE: OMA Request for Review – 2018 PAC 54370

Dear [REDACTED] and Mr. Kurlinkus:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Winnebago County (County) Board of Trustees' (Board) approval of its June 28, 2018, meeting minutes did not violate the requirements of OMA.

BACKGROUND

On August 7, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the minutes of the Board's June 28, 2018, meeting did not adequately describe the changes implemented by an ordinance that was approved at the meeting. On August 25, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda and minutes of its June 28, 2018, meeting, together with a written response to [REDACTED] complaint concerning the adequacy of the minutes. On August 28, 2018, this office received from the Winnebago County State's Attorney's Office the requested materials, together with copies of the ordinance at issue and a section from the Board's rules of order. On September 4, 2018, this office forwarded a copy of

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Mr. David J. Kurlinkus
February 1, 2019
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the Board's response to ██████████ On October 7, 2018, she e-mailed this office arguing that the full text of an ordinance should be disclosed to the public before any meeting in which it is considered by the Board or any of its committees.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

As an initial matter, no provision of OMA requires a public body to post the full text of an ordinance prior to a meeting in which the public body considers and/or takes final action on the ordinance. Further, no provision of OMA requires a public body to publicly post the board packet provided to members of the public body. Rather, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) merely provides: "Any agenda required under this Section shall set forth the *general subject matter* of any resolution or ordinance that will be the subject of final action at the meeting." (Emphasis added.) Thus, although providing the public with the full text of an ordinance in advance of a meeting would inform the public of the details of an action the public body is considering taking, a public body is not required to do so.

As to the sufficiency of the Board's June 28, 2018, meeting minutes, section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides:

All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording.⁽¹⁾ Minutes shall include, but need not be limited to:

* * *

(3) *a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.* (Emphasis added.)

¹Although ██████████ complained that the Board had not posted a video of its June 28, 2018, meeting, no provision of OMA requires a public body to make or post a video recording of the open portion of a meeting. A public body is required to record only its closed sessions, and it may keep those recordings confidential. 5 ILCS 120/2.06(e) (West 2016).

The plain language of section 2.06(a)(3) of OMA requires only that minutes *summarize* the discussion regarding matters proposed, deliberated, or decided.

The Board's June 28, 2018, meeting minutes state, in pertinent part:

31. Board Member Fiduccia read in for the first reading of an Ordinance Amending Chapter 14 of the Winnebago County Code (Animal Services Administrator Definition) to be Laid Over. Board Member Boomer made a motion to suspend the rules, seconded by Board Member Webster. Motion was approved by a voice vote. (Board Member Booker and Schultz were absent.) Board Member Fiduccia made a motion to approve the Ordinance, seconded by Tassoni. Motion was approved by a unanimous vote of all members present.^[2]


In its response to this office, the Board correctly asserted that no provision of OMA required it to include the text of the ordinance in the meeting minutes. The Board also noted that the text of the ordinance had since been posted on the County's website as part of the Board packet.

The Board's June 28, 2018, meeting minutes reflect that the Board read in the ordinance concerning the definition of the Animal Services Administrator position, suspended the rules, and voted to approve the ordinance. Although [REDACTED] contended that the minutes do not describe the changes made by the ordinance, OMA requires that meeting minutes summarize only a public body's *discussions* concerning an ordinance it has approved; OMA does not otherwise require meeting minutes to recite the contents of such an ordinance. This office has not received information indicating that the Board discussed in detail the changes to be made by the ordinance before voting on the matter. To the contrary, the video recording of the open session of the meeting, posted on the County's website, reveals no significant back-and-forth discussion of the contents of the ordinance.³ Board member Dave Fiduccia introduced the ordinance, briefly stating that it would change the definition of "Animal Services Administrator" in the County Code to provide that the employee holding the position need not be a licensed veterinarian.⁴ After the motion to suspend the rules was seconded, Board Chairman Frank

²Winnebago County Board, Meeting, June 28, 2018, Minutes 6.

³WinCoStream, County Board Meeting 6/28/18, Ustream, <http://www.ustream.tv/recorded/115834351> (last visited December 27, 2018).


⁴WinCoStream, County Board Meeting 6/28/18, Ustream, <http://www.ustream.tv/recorded/115834351>, at 1:00:17 (last visited December 27, 2018).


Mr. David J. Kurlinkus
February 1, 2019
Page 4

Haney explained his understanding that there was no State statutory requirement for an animal services administrator to be a licensed veterinarian and asked a colleague whether that was correct; she replied that although there needs to be a veterinarian on staff to provide medical advice under State law, the animal services administrator does not need to be a veterinarian.⁵ The Board proceeded to pass the motion to suspend the rules, and Chairman Haney asked whether the Board wished to discuss the ordinance; no member of the Board spoke up, and the ordinance passed.⁶ Although simply adding the substance of the change (removing the requirement that the position be held by a licensed veterinarian) would substantially improve the quality of the meeting minutes, the Board did not hold a substantive discussion concerning the change made by the ordinance. Therefore, the Board's June 28, 2018, meeting minutes do not violate section 2.06(a) of OMA. This office, however, encourages the Board to keep detailed minutes concerning the actions it takes during meetings in order to keep the public informed as to the conduct of its business.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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⁵WinCoStream, County Board Meeting 6/28/18, Ustream,
<http://www.ustream.tv/recorded/115834351>, at 1:01:19 (last visited December 27, 2018).

⁶WinCoStream, County Board Meeting 6/28/18, Ustream,
<http://www.ustream.tv/recorded/115834351>, at 1:01:58 (last visited December 27, 2018).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 1, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 56327

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On January 2, 2019, this office received your Request for Review alleging that the Policy Committee (Committee) of the Board of Education (Board) of West Chicago Community High School District 94 (School District) violated OMA in connection with its November 27, 2018, meeting. Specifically, you alleged that the Committee improperly convened the meeting with only one Board member present. You stated that the Committee is currently comprised of three people: two Board members, Mr. Rich Nagel and Mr. Gary Saake, and the School District's superintendent, Dr. Doug Domeracki, as an ex-officio member. You directed this office to the Committee's November 27, 2018, meeting minutes, which were approved at the Board's December 18, 2018, meeting, and noted that the Committee started its meeting with only Mr. Saake and Dr. Domeracki present. You questioned whether school administrators, as opposed to elected Board members, could be counted to "form a quorum for board committees and vote to approve board committee minutes."¹ According to the minutes, a School District principal, Dr. Moses Cheng, made a statement, and then the meeting was recessed for about 36 minutes until Mr. Nagel arrived.² You stated that the minutes did not provide the reason for the recess. Additionally, you asserted that Dr. Domeracki and Mr. Saake had previously announced that all administrators are now part of Board committees and that the two of them would serve as

¹E-mail from [REDACTED] to [Public Access Bureau] (January 2, 2019).

²Community High School District 94 Police Committee, Meeting, November 27, 2018, Minutes 1.

[REDACTED]
February 1, 2019

Page 2

ex-officio members of all committees; you appear to question whether Dr. Domeracki and Mr. Saake could "be lifetime members of every committee[.]"³


As a threshold matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). 15 ILCS 205/7(c)(3) (West 2016). OMA concerns the transparency with which public bodies meet and conduct business in relation to the public; it does not govern the composition or membership of committees of a public body. Similarly, it generally does not govern the number of members of a committee who must be present to form a quorum and take action. Accordingly, this office is not authorized to review claims concerning the extent to which school administrators may serve on Board committees as ex-officio members and whether a certain number of Board members must be present to constitute a quorum for purposes of convening a committee meeting.

The minutes reflect that the Committee did not discuss policies until all of its members were present. While you question whether the meeting should have been convened in the first place when only one Board member was initially present, this office has not received information indicating that the recess during the meeting was intended to circumvent the notice or other requirements of OMA. Although the delay in commencing the meeting in earnest may have been inconvenient for some members of the public, such a delay does not violate OMA. As to the completeness of the meeting minutes, section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)) provides that minutes are to include "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." The language "proposed, deliberated, or decided" means that a public body is not required to provide a detailed summary of any remarks that did not rise to the level of deliberating on a form of action. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 25528, issued March 5, 2014. Here, absent any indication that the Committee voted to recess the meeting, OMA did not require the minutes to specify the reason for the recess if a reason was given. If Mr. Saake and Dr. Domeracki voted to recess the meeting, however, that vote should have been recorded in the minutes under the plain language of section 2.06(a)(3). Accordingly, the Committee should be mindful of that requirement.

Because your submission did not set forth a summary of facts supporting the allegation that the Committee violated OMA,⁴ this office has determined that no further action is warranted.


³E-mail from [REDACTED] to [Public Access Bureau] (January 2, 2019).

⁴Under section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)), a Request for Review must include "a summary of the facts supporting the allegation."


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Page 3

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Gary R. Saake
President, Board of Education
West Chicago Community High School District 94
157 West Washington Street
West Chicago, Illinois 60185
gsaake@d94.org

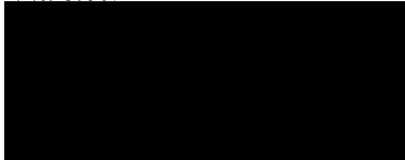


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 4, 2019

Via electronic mail



Via electronic mail

Ms. Mary Klopp
FOIA Officer
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411
hr@saukvillage.org

RE: Open Meetings Act Request for Review – 2018 PAC 55726

Dear [REDACTED] and Ms. Klopp:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Village of Sauk Village (Village) Board of Trustees (Board) violated OMA by (1) failing to approve in a timely manner the minutes of the August and September 2018 meetings of Board and the Board's Committee of the Whole and, by (2) failing to conduct a semi-annual review of all of its closed meeting minutes.

On November 14, 2018, [REDACTED] submitted this Request for Review alleging that the Board and the Committee violated section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)). Specifically, [REDACTED] asserted that he submitted a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et. seq.* (West 2016)) request to the Village on October 22, 2018, seeking copies of the minutes for the Board and the Committee from April 24, 2018, through September 30, 2018, and that the Village responded on October 29, 2018, by providing the

Ms. Mary Klopp
February 4, 2019
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minutes for only the months of May and June of 2018. He appears to contend that the Village's response indicates that the Board and the Committee had not approved the other requested minutes even though more than 30 days had elapsed, and more than two regular meetings had occurred since the meetings in question.

Additionally, [REDACTED] Request for Review alleged that the Board violated section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)) by failing to conduct semi-annual reviews of the closed session minutes from its meetings since June 1, 2017. [REDACTED] October 22, 2018, FOIA request also sought copies of "meeting dates in calendar or otherwise any published medium"¹ and a "[l]ist of dates and times for any Board meetings held which specifically address the review of Executive Session minutes"² since June 1, 2017. The Village responded that it did not possess or maintain any responsive documents. [REDACTED] appears to argue that the Village's response demonstrates the Board's failure to comply with the semi-annual review requirement.

On December 4, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to [REDACTED] allegations, including specifically addressing whether the Board and Committee had approved the meeting minutes at issue in accordance with section 2.06(b) of OMA and whether the Board had met the requirements of section 2.06(d) of OMA within the previous six months. This office also requested a copy of the minutes of any meeting within the previous twelve months during which the Board had determined and reported on the need to keep closed session minutes confidential.

On December 14, 2018, the Village provided a written response on behalf of the Board and the Committee. On December 17, 2018, this office forwarded a copy of the Board's response to [REDACTED] he replied on December 18, 2018. Later that day, an Assistant Attorney General in the Public Access Bureau posed several follow-up questions to the Village, via e-mail, to clarify certain aspects of its response. Having not received a response to this e-mail, on January 11, 2019, this office sent a follow-up letter to the Village. On January 22, 2019, this office received the Village's supplemental response.

¹E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (November 14, 2018).

²E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (November 14, 2018).

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Scope of Review

Request for Review alleges that on several occasions between April 24, 2018, and September 30, 2018, the Board and the Committee failed to approve minutes of their open meetings within 30 days after the meetings or at the second subsequent regular meetings as required by section 2.06(b) of OMA. This office has found that committees of the whole are not separate public bodies from boards, but rather, provide a different meeting format for boards. *See Ill. Att'y Gen. PAC Rev. Ltr. 46954, issued May 23, 2017; see also Black's Law Dictionary (10th ed. 2014), committee, available at Westlaw BLACKS ("A deliberative assembly may resolve itself into a committee of the whole so that it can take advantage of the greater procedural flexibility that a committee enjoys, usu. presided over by some chair other than the assembly's regular chair.").* Accordingly, this office considers the Board and the Committee to be the same public body.

Section 2.06(b) provides:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. * * * [A] public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later 60 days after the alleged OMA violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The**

request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly. (Emphasis added.)

Request for Review was submitted on November 14, 2018. Therefore, under the plain language of section 3.5(a) of OMA, this office may not review alleged OMA violations that occurred before September 14, 2018, because they occurred more than 60 days before filed this Request for Review.³ Section 3.5(a) of OMA does permit a person to file a Request for Review within 60 days of discovering a violation, for up to two years after the date of the violation, but only if the requester can show that facts concerning the violation were not discovered within 60 days despite the requester's **reasonable diligence**. Although Request for Review indicated that he submitted a FOIA request on October 22, 2018, it did not assert that he discovered the alleged OMA violations outside of the 60-day period, or that he failed to discover the alleged OMA violations within 60 days despite having exercised reasonable diligence.

Moreover, because section 2.06(b) requires the Board, as the governing body of the Village, to post the minutes on the Village's website within 10 days after the approval if full-time staff of the Village maintains its website, and because it is undisputed that both the Board and the Committee's minutes are available on the Village's website,⁴ it appears would have been able to discover the alleged violations within 60 days of the alleged violations.

Because allegations concerning the approval of the Board and the Committee's April 2018, and July 2018, meeting minutes are untimely, section 3.5(a) of OMA precludes the Public Access Counselor from reviewing those allegations. Accordingly, this review is limited to allegations concerning the timely approval of the Board and the Committee's August 2018, and September 2018, meeting minutes and whether the Board conducted a semi-annual review of all of its closed meeting minutes.

³The Village's website indicates that the Board held regular meetings during the relevant timeframe on April 24, 2018, July 10, 2018, July 24, 2018, August 14, 2018, August 24, 2018, September 11, 2018, and September 25, 2018, and special meetings on July 16, 2018, and August 6, 2018. The Committee held relevant regular meetings on April 3, 2018, July 14, 2018, August 21, 2018, and September 18, 2018. See <https://www.saukvillage.org/Agendas.html>

⁴<https://www.saukvillage.org/Agendas.html>

Section 2.06(b) of OMA

As discussed above, section 2.06(b) of OMA requires a public body to approve its meeting minutes within 30 days after its meetings or at the public body's second subsequent regular meeting, and requires the public body to post those minutes on the public body's website within 10 days after the approval if full-time staff of the public body maintains its website.

In its answer to this office, the Village acknowledged that, "[a]dmittedly, the Village is not in compliance with OMA relative to timely presenting minutes of meeting[s]."⁵ It is apparent that more than 30 days have elapsed, and more than two regular Board meetings have occurred since the meetings in question.⁶ Accordingly, this office concludes that the Board violated section 2.06(b) of OMA by failing to approve the relevant open meeting minutes in a timely manner. *See* Ill. Att'y Gen. PAC Rev. Ltr. 46954, issued May 23, 2017, at 3 (finding that because a board and a committee of the whole were essentially the same entity, the board was required to approve the committee's meeting minutes in accordance with section 2.06(b)). To remedy these violations, this office requests that the Board promptly approve the minutes of its August 6, 2018, August 14, 2018, August 21, 2018, August 24, 2018, September 11, 2018, September 18, 2018, and September 25, 2018, meetings, if it has not already done so.⁷ Additionally, this office cautions the Board to be mindful of its obligation to approve all meeting minutes in a timely manner.

Section 2.06(d) of OMA

In addition to the timeliness of the approval of meeting minutes, [REDACTED] Request for Review alleged that the Board violated OMA by failing to conduct semi-annual reviews of closed session minutes as required by section 2.06(d) to determine whether the need for confidentiality of those minutes still exists. Section 2.06(d) provides:

⁵Letter from FOIA Officer, [Mary Klopp],[Village of Sauk Village] to [REDACTED] (December 14, 2018).

⁶The Village's website indicates that the Committee held a meeting on October 2, 2018 and the Board held a regular meeting on October 9, 2018. <https://www.saukvillage.org/Agendas.html>

⁷On January 14, 2019, this office received an e-mail from [REDACTED] containing a copy of the agenda for the Board's January 8, 2019, regular meeting. The agenda indicated that the Board would review and approve certain meeting minutes for both the Board and Committee including the Board's August 14, 2018, August 28, 2018, and September 11, 2018, regular meeting minutes. The Village's supplemental response to this office on January 22, 2019, however, indicated that "in speaking with the Village Clerk who is responsible for producing the minutes * * * [she] provided no additional guidance or detail" concerning plans to remedy these OMA violations. Letter from Mary Klopp, FOIA Officer, Village of Sauk Village to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (January 22, 2019).

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

In its response to this office, the Board acknowledged that it had not conducted timely reviews of meeting minutes in accordance with this provision. Therefore, the Public Access Bureau concludes that the Board violated section 2.06(d) of OMA. Additionally, the Board's supplemental response to this office indicated that the Board did not have a plan to conduct a semi-annual review of its closed session minutes. This office requests that the Board remedy this violation by promptly conducting a semi-annual review of its closed session minutes to determine whether the need for confidentiality of those minutes still exists and to report, in open session, on which minutes need to remain confidential and which minutes no longer require confidential treatment and may be disclosed to the public, if any. This office also reminds the Board that it must continue its review of closed session meetings, no less than semi-annually, as required by section 2.06(d) of OMA, and cautions the Board to be mindful of its obligations to fully comply with OMA.

[REDACTED]
Ms. Mary Klopp

February 4, 2019

Page 7

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, you may contact me by mail at the Chicago addresses on the bottom of the first page of this letter, by phone at (312) 550-4480, or by e-mail at sbarnaby@atg.state.il.us.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: The Honorable Derrick Burgess
Mayor
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411

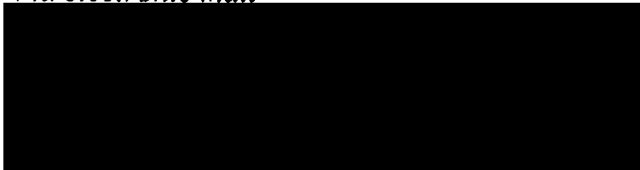


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 4, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56594

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). The Public Access Bureau has received your Request for Review alleging a potential violation of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Public Affairs and Safety Committee of the City of Elmhurst (Committee) in connection with its December 10, 2018 meeting. This office's review of the information you have furnished, however, provides no basis for this office to conclude that the Committee violated OMA.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a *violation of this Act* by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. * * * The request for review * * * must include a summary of the *facts supporting the allegation*. (Emphasis added.)

On January 28, 2019, you submitted this Request for Review to the Public Access Bureau contesting whether the Committee properly recorded each member's vote to enter closed session under section 2a of OMA (5 ILCS 120/2a (West 2016)) during the December 10, 2018, meeting. Although you acknowledged that the minutes of the December 10, 2018, meeting indicated that the Committee held a voice vote in open session to enter closed session and that the vote was unanimous, you have alleged that the meeting minutes do not indicate how *each* member voted. Specifically, you asserted that the minutes are insufficient because one or more

February 4, 2019

Page 2

members of the Committee may "have remained silent during the voice vote, and the silence might not have been recorded as an abstention."¹

Section 2a of OMA provides, in pertinent part:


A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act. * * * The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. * * *

At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act.

This statutory language specifies that each member's vote on closing a portion of a meeting must be recorded into meeting minutes. Black's Law Dictionary defines "unanimous" as "[a]greeing in opinion; being in complete accord" or "[a]rrived at by the consent of all[.]" *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS. In this instance, the Committee's December 10, 2018, meeting minutes clearly document that all Committee members attended the meeting and that all the members voted in favor of entering into closed session.² Your speculation that one or more members of the Committee could have remained silent during the vote does not provide any facts supporting the allegation that the minutes are inaccurate or that they lack sufficient information to record the vote of each member. Accordingly, this office has determined that no further action is warranted in this matter.

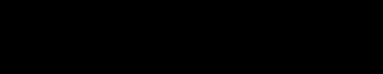
¹E-mail from [REDACTED] to Sarah Pratt, Public Access Counselor (January 28, 2019).

²City of Elmhurst Public Affairs and Safety Committee, Meeting, December 10, 2018, Minutes 1.


February 4, 2019

Page 2

This letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter..

Very truly yours, 


LEO DRAWS
Assistant Attorney General
Public Access Bureau

56594 o no fi war mun

cc: *Via electronic mail*
The Honorable Scott M. Levin
Chairman, Public Affairs and Safety Committee
City of Elmhurst
209 North York Street
Elmhurst, Illinois 60126
scott.levin@elmhurst.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 5, 2019

Via electronic mail

The Honorable Gopal G. Lalimalani, MD, MBA
President, Board of Trustees
Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 60523
glalimalani@oak-brook.org

Via electronic mail

The Honorable Michael Manzo
Trustee, Board of Trustees
Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 60523
mmanzo@oak-brook.org

Via electronic mail

The Honorable Charlotte K. Pruss
Village Clerk
Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 60523
cpruss@oak-brook.org

Via electronic mail

Mr. Peter M. Friedman
Attorney for Village of Oak Brook
Holland & Knight
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
peter.friedman@hkclaw.com

RE: OMA Request for Review – 2012 PAC 22637; 2012 PAC 22721

Dear Dr. Lalimalani, Mr. Manzo, Ms. Pruss, and Mr. Friedman:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On December 18, 2012, this office received Mr. Michael Manzo's Request for Review (2012 PAC 22637) alleging that the Village of Oak Brook (Village) Board of Trustees (Board) violated OMA at its December 11, 2012, regular meeting. Mr. Manzo, who was and still is a Board trustee, stated that the Board entered closed session "to discuss the request of a village trustee to receive an unredacted police report regarding an incident that he was involved in."¹ He alleged that the Board did not provide notice that it "would be discussing this issue in closed session" and that the issue was also not a topic appropriate for closed session.² He further

¹E-mail from [Michael Manzo] to Sarah Pratt (December 18, 2012).

²E-mail from [Michael Manzo] to Sarah Pratt (December 18, 2012).

The Honorable Gopal G. Lalimalani
The Honorable Michael Manzo
The Honorable Charlotte K. Pruss
Mr. Peter M. Friedman
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alleged that the Board improperly voted in closed session to permit the trustee to receive an unredacted report. Specifically, he contended that "it was improper to poll the board in closed session without a follow-up 'public' vote" or public discussion of the matter.³ On January 23, 2013, Mr. Manzo submitted additional information to this office further explaining his claims regarding the matter and questioning the participation of the trustee at issue in the closed session.

On December 28, 2012, this office received a similar Request for Review (2012 PAC 22721) from Dr. Gopal Lalimalani alleging that the Board violated OMA at its December 11, 2012, meeting by improperly entering closed session to discuss the handling of an anticipated Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2012)) request from then-Trustee Stelios Aktipis. Dr. Lalimalani, who was and still is Village President, explained that Trustee Aktipis had been the subject of a criminal investigation, and that Trustee Aktipis had indicated his intent to file a new FOIA request seeking a largely unredacted copy of the police report pertaining to that investigation after receiving a significantly redacted copy in response to his initial request. Like Mr. Manzo, Dr. Lalimalani alleged that the Board took an improper consensus vote on the matter, claiming that "[t]he majority consensus vote/opinion of the Trustees was secured during the closed session resulting in the FOIA officer being allowed to respond with a largely unredacted version of the police report in the event of filing of the request by Trustee Aktipis[.]"⁴ Dr. Lalimalani also contended that the Board failed to provide adequate notice to the public of its discussion of the matter and improperly took final action in closed session when it reached consensus on how to handle the forthcoming request. He noted that he and two other Board members opposed "this closed session 'consensus voting'" and that Trustee Aktipis was present at the closed session.⁵

On January 3, 2013, this office forwarded a copy of Mr. Manzo's Request for Review to the Board and asked it to provide this office with copies of the agenda, minutes (open and closed), and verbatim recording of the closed session portion of its December 11, 2012, meeting, together with a written response to Mr. Manzo's allegations. On January 10, 2013, this office forwarded a copy of Dr. Lalimalani's Request for Review to the Board and likewise asked

³E-mail from [Michael Manzo] to Sarah Pratt (December 18, 2012).

⁴Attached document to OMA – Request for Review by Public Access Counselor (PAC) form submitted by Gopal G. Lalimalani (undated).

⁵Attached document to OMA – Request for Review by Public Access Counselor (PAC) form submitted by Gopal G. Lalimalani (undated).

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it to provide this office with copies of the same meeting materials, together with a written response to Dr. Lalimalani's allegations. On January 25, 2013, this office received the requested materials from the Board's attorney, Mr. Peter M. Friedman, including a complete version of the Board's written response to both matters for this office's confidential review and a redacted version⁶ for this office to forward to Mr. Manzo and Dr. Lalimalani. In the Board's response, Mr. Friedman asserted that the Board properly entered closed session at its December 11, 2012, meeting pursuant to sections 2(c)(1) and 2(c)(14) of OMA (5 ILCS 120/2(c)(1), (c)(14) (West 2012)) to discuss "both the criminal investigation related to the complaint involving Trustee Aktipis ((2(c)(1)) and the performance of specific Village employees (in this case the Police Chief, the Village Manager, and the Assistant Village Manager (who is the Village's designated FOIA Officer) ((2(c)(14))."⁷ This office forwarded copies of the Board's response to Mr. Manzo and Dr. Lalimalani on January 31, 2013; Dr. Lalimalani replied that same day. On February 1, 2013, this office received a copy of a letter from the DuPage County State's Attorney's Office (State's Attorney's Office) to Dr. Lalimalani expressing the State's Attorney's Office's position that the section 2(c)(14) authorized the Board's closed session discussion. On February 7, 2013, Mr. Manzo submitted a reply to this office in answer to the Board's response.

DISCUSSION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2012)). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2012).

Section 2(c)(1) of OMA permits a public body to enter closed session to discuss: "The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." The "use of the phrase 'specific employees of the public body' significantly limits the scope of the exception." Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3. In Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, the Attorney General considered whether budgetary matters that may impact the employment of certain personnel fall

⁶See 5 ILCS 120/3.5(c) (West 2012) ("The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

⁷Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 5.

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within the scope of section 2(c)(1). The Attorney General concluded that the public body's closed budgetary discussions did not center on the merits or conduct of specific employees or prospective employees and thus were not authorized by section 2(c)(1). Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, at 3.

Additionally, section 2(c)(14) of OMA permits a public body discuss in closed session "[i]nformant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities." By its plain language, this exception allows a public body that conducts criminal investigations to discuss those investigations in closed session.

With respect to a public body's ability to take final action, section 2(e) of OMA (5 ILCS 120/2(e) (West 2012)) provides: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." It does not violate OMA for a public body to take a preliminary vote in closed session followed by a final vote in open session. *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶74, 77 N.E.3d 625, 637 (2017) ("Under the plain language of section 2(e) of the Open Meetings Act, the public vote is not merely a ratification of a final action taken earlier in a closed session; it is the final action. Without the public vote, no final action has occurred."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 31510, issued September 6, 2017, at 3-4 (public body did not improperly take final action in closed session when it reached a tentative consensus on the employment status of an employee, who subsequently retired).

In the Board's response to this office, Mr. Friedman stated that the Village had received a message from an individual raising allegations against Mr. Aktipis. That message was reported to the Village's police department, which launched a criminal investigation of the matter. According to Mr. Friedman, Trustee Aktipis submitted a FOIA request to the Village seeking the police report concerning the investigation, and he was provided a copy of the report with certain parts redacted.⁸ Mr. Friedman confirmed that Trustee Aktipis and his attorney subsequently indicated that they would submit a second FOIA request seeking a mostly unredacted copy of the report. Mr. Friedman contended that the Board properly entered closed

⁸The Board indicated that it had redacted the police report at issue pursuant to sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(b), (1)(c), (1)(d)(iv) (West 2012)).

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session at its December 11, 2012, meeting pursuant to section 2(c)(1) to discuss "the performance of the FOIA Officer related to the FOIA request."⁹ In particular, he asserted:

Regarding the review of the performance of the FOIA Officer, the Closed Session discussion focused not only on how the FOIA Request was handled (with regard to the nature and extent of the redactions), but also on how the FOIA Officer would perform his discretionary duties with regard to Trustee Aktipis's stated intent to file a new FOIA request for the Police Report with the narrative portions left largely unredacted.^[10]

Mr. Friedman acknowledged that at the end of the discussion, "there appeared to be a consensus of a majority of the trustees that, under these circumstances it would not be unreasonable for the FOIA officer to provide the largely unredacted version of the Police Report[.]"¹¹ He contended, however, that "[t]here was also a consensus that the Village Board did not need to take any action to direct the FOIA Officer in the exercise of his discretion," particularly given that "he now had the benefit of the sense of the Board regarding his past performance on the FOIA Request and any future performance on similar FOIA requests that may come from Trustee Aktipis."¹² Mr. Friedman argued that the Board did not take any final action in reaching a consensus on the matter. He contended: "Polling the Board is not final action and, therefore, it was in no way inconsistent for the Board to take a straw poll on whether there was consensus on how the FOIA Officer should deal with any future FOIA Request for the" report at issue.¹³

⁹Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 5.

¹⁰Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 5.

¹¹Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 6.

¹²Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 6.

¹³Letter from Peter M. Friedman, Holland & Knight LLP, to Lindsay La[V]ine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 10.

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In his reply to that answer, Dr. Lalimalani disputed the Board's claim that it had entered closed session to discuss the performance of the police or FOIA officer. He asserted that, to his knowledge, no written or verbal complaint had been lodged against either party, and that "there was no attempt or intention to discuss the FOIA officer's performance[.]"¹⁴ Dr. Lalimalani argued that, rather than discussing employee performance, the Board discussed its policy and practice in handling FOIA requests and took action by providing instruction to the FOIA Officer on how to handle any future FOIA request submitted by Trustee Aktipis. He contended, in pertinent part:

No proper notice was given to the public that an official policy that was long standing would be discussed and changed in closed door session. This is clearly demonstrated by the meeting minutes and the audio tape. The discussion of this policy itself cannot be claimed to be properly discussed in closed door.¹⁵

Mr. Manzo also disputed the Board's claim that it had entered closed session to discuss the performance of the police or FOIA officer, asserting that the claim "is simply not true and was not placed on the agenda."¹⁶ Similar to Dr. Lalimalani, he contended that "the board took action in the closed door session which changed an official policy and instructed the village [FOIA] officer to take action."¹⁷ He further maintained that the Board did not provide proper notice to the public regarding the Board's discussion and action on the matter.

Based on this office's confidential review of the closed session recording and minutes, the Board's discussion did not fall within the scope of the section 2(c)(1) exception. Although the FOIA officer's response to Trustee Aktipis' FOIA request and his response to future requests may have related to his job duties, the Board did not specifically discuss the merits or conduct of the FOIA officer. Instead, the majority of the closed session discussion focused on the underlying FOIA request and how the Village should respond to a future FOIA request seeking the report at issue. This discussion did not pertain directly to the FOIA officer's job

¹⁴Letter from Gopal G. Lalimalani, MD, M.B.A., Village President, Village of Oak Brook, to Lindsay La[V]jine, Assistant Attorney General, Public Access Bureau (January 31, 2013).

¹⁵Letter from Gopal G. Lalimalani, MD, M.B.A., Village President, Village of Oak Brook, to Lindsay La[V]jine, Assistant Attorney General, Public Access Bureau (January 31, 2013).

¹⁶E-mail from [Michael Manzo] to [Stacie Chimera] (February 7, 2013).

¹⁷E-mail from [Michael Manzo] to [Stacie Chimera] (February 7, 2013).

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performance. Further, this office is unable to conclude that the discussion fell within the scope of the section 2(c)(14) exception. Even assuming that the Board is "a public body with criminal investigatory responsibilities," the Board's discussion did not center on the conduct of "ongoing, prior or future criminal investigations." The closed session materials reflect that the Board deliberated more generally on the issue of whether a largely unredacted version of the report concerning the investigation could be provided in response to a potential future request. Although the State's Attorney's Office asserted that "the content and subject matter of the requested document"—a police report concerning a criminal investigation—signifies that the section 2(c)(14) exception authorized the Board's closed session discussion,¹⁸ that discussion concerned FOIA policy and procedure rather than how the investigation was conducted. Accordingly, this office concludes that the Board violated section 2(a) of OMA by holding an unauthorized closed session discussion. This office requests that the Board vote to publicly disclose the portion of the closed session verbatim recording concerning Trustee Aktipis' FOIA request. This office also cautions the Board to confine its future closed session discussions to the section 2(c) exceptions it cites prior to adjourning to closed session, and to construe those exceptions narrowly.

With regard to Mr. Manzo's and Dr. Lalmalani's assertion that the Board reached a majority consensus on the issue in closed session, the Board did not dispute that claim but asserted that the consensus did not amount to final action. Specifically, the Board argued that the consensus was non-binding and did not require the FOIA officer to take any particular action. As noted above, a public body does not violate OMA if it reaches a tentative consensus on a matter or takes a preliminary vote in closed session. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 31510, issued September 6, 2017, at 3-4. In this matter, this office is unable to conclude that the majority consensus reached during the closed session constituted a final action of the Board. While the Board provided a majority opinion to the FOIA officer as to how to handle a future FOIA request by Trustee Aktipis, it appears that the FOIA officer was not required to follow that opinion and, in fact, did not do so. According to the Board, "[t]he Village Manager subsequently notified the Village Board on December 18 that the FOIA Officer would remain consistent with Village practice unless the Board took official action in open session legally directing the FOIA Officer otherwise."¹⁹ This office has not received information indicating that the Board attempted to enforce the consensus opinion/vote on any FOIA requests or otherwise incorporated the decision in the Village's formal policy regarding FOIA requests.

¹⁸Letter from Nancy J. Wolfe, First Assistant State's Attorney, Du Page County State's Attorney, to Gopal G. Lalmalani, Mayor of the Village of Oak Brook (January 30, 2013), at 1.

¹⁹Letter from Peter M. Friedman, Holland & Knight, to Lindsay Lavine, Assistant Attorney General, Public Access Bureau (January 24, 2013), at 7.

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Accordingly, the available information does not support the claim that the Board violated section 2(e) of OMA.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 5, 2019

Via electronic mail



Via electronic mail

Mr. David J. Braun
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter Street, P.O. Box 80
Monticello, IL 61856
dbraun@millertracy.com

RE: OMA Request for Review – 2018 PAC 51665

Dear [REDACTED] and Mr. Braun:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Williamsfield Community Unit School District No. 210 (District) improperly restricted public comment during its December 11, 2017, meeting, but did not violate OMA during its January 8, 2018, meeting.

BACKGROUND

On February 9, 2018, [REDACTED] submitted a Request for Review alleging that she was interrupted and was not allowed to finish her comments during the public comment portion of the Board meetings held on December 11, 2017, and January 8, 2018. [REDACTED] alleged that the Board attached to its agendas new rules allegedly imposed by the Board President, which "says we can't say a board member's name," and that at each of the above referenced meetings, the President cut off her comments and asked her to sit down after she mentioned the name of a Board member.¹ On February 20, 2018, this office forwarded a copy

¹E-mail from [REDACTED] to Sarah Pratt, Public Access counselor, Office of the Attorney General (February 9, 2018).

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of the Request for Review to the President of the Board, as representative of the Board, and requested a detailed written response to [REDACTED] allegations, together with copies of the minutes, agendas, any recordings of the meetings, as well as a copy of the Board's rules for public comment.

On March 1, 2018, the Board provided a written response and the requested materials, along with an affidavit of the Board President.² This office forwarded a copy of the Board's response to [REDACTED] on April 2, 2018, she submitted a written reply.

DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) Under the plain language of section 2.06(g), a public body must establish and record rules and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 7. The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5.

Public Comment Rules

In response to this office's request for a copy of the Board's rules regarding public comment, the Board submitted a copy of section 2:230 of the Williamsfield School Policy Manual entitled "Public Participation at School Board Meetings and Petitions to the Board" (Board Rules). Section 2:230 of the Board Rules provides:

At each regular and special open meeting, members of the public and District employees may comment to or ask questions of the School Board, subject to reasonable constraints.

The individuals appearing before the Board are expected to follow these guidelines:

1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
2. Identify oneself and be brief. Ordinarily, comments shall be limited to 5 minutes. * * *

²Letter from David J. Braun to Edie Steinberg, Assistant Attorney General, Public Access Bureau (March 1, 2018).

3. The Board President may shorten or lengthen an individual's opportunity to speak. * * *
4. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.
5. Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.
6. Conduct oneself with respect and civility toward others[.]^[3]

Attached to the Board's agendas for the December 11, 2017, and January 8, 2018, meetings, however, is a "Message from Board President Ingle" concerning Board Policy 2:230, which lists three additional guidelines for public comment (Message).⁴ The recordings provided to this office establish that the Board President read the Message prior to the public comment portion of each of the meetings in question. The first provision directly conflicts with Board Rule 2, stating that the "customary time allotted per speaker is 2 minutes" rather than five minutes. The second provision adds requirements to Board Rule 6, providing that "[q]uestions, concerns, or praises are to be directed to the Board as a whole and may not be put to any individual member of the Board or administrative staff."⁵

When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *See, e.g., DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶24, 962 N.E. 2d 444, 452 (2012). The plain language of section 2.06(g) requires that the rules governing public comment not only be "established" but also "recorded" by the public body. Although the Board asserted, and ██████████ agreed, that the two minute restriction on public comment has been its custom, the Board has not presented any evidence that the conflicting provision of the

³Williamsfield School Policy Manual, §2:230 (January 2016).

⁴Message from Board President Ingle, attachment to Williamsfield Community Unit School District, Board of Education Meeting, Agenda (December 11, 2017); Message from Board President Ingle, attachment to Williamsfield Community Unit School District, Board of Education Meeting, Agenda (January 8, 2018).

⁵Message from Board President Ingle, attachment to Williamsfield Community Unit School District, Board of Education Meeting, Agenda (December 11, 2017); Message from Board President Ingle, attachment to Williamsfield Community Unit School District, Board of Education Meeting, Agenda (January 8, 2018). The third provision of the Messages informs the public that "[t]he Board typically does not engage in two-way conversations during the public comment portion of the meeting."

Board Rules contained in section 2:230 of the School Policy Manual has been revoked or otherwise formally amended to change the time for public comment. Further, the Board concedes that the additional rules attached to its agenda had not been established by the Board or officially recorded. Accordingly, the Board Rules govern how the public addresses public officials, not the Message. Ill. Att'y Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 6 ("Nothing in OMA suggests that past practices which have not been formally incorporated into a public body's rules are established and recorded by the public body within the meaning of section 2.06(g), and may be enforced to limit public comment."); see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 45126, issued April 6, 2017, at 3 (established and recorded public comment rule codified in village code governed rather than rule displayed during each meeting); Ill. Att'y Gen. PAC Req. Rev. Ltr. 50791, issued March 1, 2018, at 2-3 (established and recorded public comment rule governed rather than rules stated in an agenda).

December 11, 2017, Meeting

██████████ alleges that during the December 11, 2017, meeting, the President interrupted her comment and asked her to sit down after she began talking about the behavior of one of the Board members at a previous meeting. This office has reviewed the recording of that portion of the meeting in which ██████████ provides public comment. ██████████ comments were centered on the involvement of Board member Doug Baird in creating a directive for the school. As ██████████ proceeded with her comments, the President interrupted saying "Thank you. ██████████ Thank you. You are supposed to address the Board as a whole." She responded, saying "I am addressing you all. I am telling you all what was wrong with what Doug did. My question is why did Doug lie."⁶ The President interrupted, saying: "You can have a seat or I will ask you to leave. You address the Board as a whole. No individuals." ██████████ handed the Board some records and did not continue to comment.

Upon review of the parties' written submissions and the recording, it is apparent that the President enforced the second provision of the Message requiring a commenter's concerns to be directed to the Board as a whole and not to any individual member of the Board. As explained above, this provision was not an established or recorded rule. The Board asserted that "it was not unreasonable, nor antithetical to policy or the law for the Board President to intervene on behalf of individuals to assure an orderly and civil public proceeding."⁷ We agree that a public body has inherent authority to conduct a meeting in an efficient and orderly manner.

⁶Williamsfield Community Unit School District No. 210 Board of Education, Meeting, December 11, 2017, Audio Recording (on file with author).

⁷Letter from David J. Braun to Edie Steinberg, Assistant Attorney General, Public Access Bureau (March 1, 2018), p. 4.

See Ill. Att'y Pub. Acc. Op. No. 19-002, at 6-7. Further, section 6 of the Board's Rules requires persons addressing the Board to "conduct oneself with respect and civility toward others."⁸

Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, a board may adopt rules to maintain order and decorum at public meetings to ensure that meetings are conducted efficiently. See *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-0012, at 5 (a public body may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum). However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. See *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, at 923-25 (N.D. Ill. 2009). While a public body may enforce rules regarding decorum, content-based restrictions must be narrowly construed. See *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009) ("Any content-based restrictions, promulgated with reference to the content of the speech being restricted, are subject to strict-scrutiny, and must serve a compelling state interest and be narrowly drawn to achieve that purpose."). Further, rules that govern the decorum of a meeting are permitted only if it is directed to conduct which is "actually disturbing or impeding a meeting." *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013) (ordinance unconstitutional because it provided for the removal of individuals for proscribed types of remarks even if those remarks did not disrupt a meeting). Disagreeing with the content of a speaker's speech is not evidence that the speaker created a disturbance or otherwise interfered with the efficiency of the proceedings. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 39239, issued June 29, 2016, at 4-5.

With respect to the December 11, 2017, meeting, it does not appear that [REDACTED] comments created a disturbance or otherwise interfered with the efficiency of the Board's proceedings. The recording of the meeting indicates that the Board's restrictions of [REDACTED] comments were directed towards her references to a particular Board member in connection with public business of the District. When the President first interrupted [REDACTED] she had only mentioned a certain Board member's conduct pertaining to a school directive. The Board does not contend that any other aspect of [REDACTED] conduct was disruptive other than the content of her statement about the Board member. This office has repeatedly determined that "[w]hen criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3 (restricting comment criticizing a public official by name impermissible); Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2018, at 4-6 (restricting comment criticizing elected officials by name in connection with public matters impermissible).

⁸Williamsfield School Policy Manual, §2:230(6) (January 2016).

Therefore, this office concludes that the Board violated section 2.06(g) of OMA by (1) imposing an unestablished and unrecorded rule limiting public comment and (2) impermissibly restricting [REDACTED] right to address public officials at the December 11, 2017, meeting.

In accordance with the conclusions expressed in this determination, this office requests that the Board refrain from limiting public comment at any future meetings except pursuant to its established and recorded rules. In addition, this office requests that the Board permit members of the public to refer to Board members or other public officials who they are criticizing or otherwise commenting on by name, notwithstanding that the members are not required to respond to comments.⁹ In the event that the Board chooses to amend its established and recorded Board Rules regarding public comment, this office notes those rules must tend to accommodate, rather than unreasonably restrict, the right to address public officials, and therefore should be appropriately narrowly-tailored to regulate only those governmental interests relating to decorum and efficiency.

January 8, 2018, Meeting

[REDACTED] alleges that during the January 8, 2018, meeting the President interrupted her comment and called the police after she began talking about one of the Board members. This office has listened to the audio recording of that portion of the meeting during which [REDACTED] addressed the Board. [REDACTED] began her public comment by talking about the harassment of people who had previously spoken at meetings of the Board. Next, she talked about her personal divorce proceedings and a real estate transaction pertaining to her home involving Board member Brian Howard and proceeded to tell the Board that Mr. Howard appeared at a child support hearing. After speaking about this personal matter, the President interrupted her comments saying: "[REDACTED] please." [REDACTED] continued with her remarks stating that she was not surprised that Mr. Howard teamed-up with her ex-husband after she filed an OMA Request for Review. The President interrupted her again asking her to please keep her comments towards the school. Members of the public began telling the Board President to stop interrupting her public comment. The President explained to [REDACTED] that she is singling out an individual board member. A member of the public said "we are going to single all of them out next."¹⁰ The President replies to the members of the public that he would ask them all to leave if they did not keep order.

⁹See Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7 ("OMA does not require any response by or answers from public officials.")

¹⁰Williamsfield Community Unit School District No. 210 Board of Education, Meeting, January 8, 2018, Audio Recording (on file with author).

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██████████ then resumed her public comment. When two minutes had passed, the President informed her that her two minutes were up. Members of the public informed the Board that the published rules allow 5 minutes. After further disruptions by members of the public, the President and one of the members of the public who objected to the enforcement of the two-minute rule both called for a police response. After waiting approximately 10 minutes for a police deputy, who had not yet arrived at the meeting, the Board allowed ██████████ to finish her public comment. ██████████ relayed that she thought Mr. Howard's actions, in teaming up with her ex-husband in an attempt to purchase her home, was retaliation for her submission of an OMA Request for Review, and concluded that she was concerned that four Board members were destroying the school.

██████████ alleged that the Board cut off her comments as soon as she mentioned the name of the Board member. The Board responded that ██████████ comment did not have "anything to do with the Board or anything in the Board's control." The Board noted that "the statement devolved into an emotional intense and unrelated story about Complainant's divorce proceedings and a real estate transaction involving Complainant and a Board member[.]" stressed that "the Board is not the proper forum for redress of her personal struggle[.]" and reiterated that ██████████ comments were "irrelevant to the work of the Board."¹¹

As stated above, "[w]hen criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3. Although public bodies must generally permit members of the public to refer to Board members or other public officials that they are criticizing or otherwise commenting on by name, when public comment discusses personal matters separate and apart from the performance of public duties, the business of a board, or other public body matters, a board may limit the public comment to conserve time and to conduct the meeting in an efficient manner. *See Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1373 (D. Kan. 1998) (city council did not violate first amendment to the United States Constitution by restricting personal comments about an appointee to a mayoral commission that were not directly relevant to the business of the public body). A review of the recording reveals that the President initially interrupted ██████████ while she was speaking about personal matters between herself, her ex-husband, and Mr. Howard. The President was within his authority to limit the discussion of these highly personal matters to conserve time and run an efficient meeting. Although, after this initial interruption, ██████████ connected her personal remarks to matters pertaining to the Board, the connection was not apparent at the time of the initial interruption. While it may have been a better practice to have allowed ██████████ to conclude her comments, we are unable to conclude that the Board violated section 2.06(g) by initially

¹¹Letter from David J. Braun to Edie Steinberg, Assistant Attorney General, Public Access Bureau (March 1, 2018), p. 5.

[REDACTED]
Mr. David J. Braun
February 5, 2019
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attempting to limit [REDACTED] highly personal comments, which were not directly related to Board members' duties, Board business, or District matters, during its January 8, meeting.¹²

After the initial interruption, the Board again interrupted [REDACTED] by notifying her that she was singling out an individual Board member. This interruption was an apparent attempt to use its unestablished and unrecorded guideline in the Message to limit [REDACTED] comments. As discussed above, the Board's use of its unestablished and unrecorded rules to regulate [REDACTED] comments was a violation of OMA. However, because the Board allowed [REDACTED] to complete her public comment unimpeded by further interruption, albeit after a long pause because of a separate disruption of the meeting, we are unable to conclude that the Board improperly restricted [REDACTED] from addressing public officials at its January 8, 2018, meeting.

In summary, this office concludes that the Board violated section 2.06(g) of OMA during its December 11, 2017, meeting, but did not violate section 2.06(g) of OMA during its January 8, 2018, meeting. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (312) 814-5201.

Very truly yours, [REDACTED]

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

51665 o 206g pub comment improper proper sd

¹²After allowing [REDACTED] to continue her comment, the Board also interrupted [REDACTED] to enforce a two-minute time limit, which contradicted its established and recorded five-minute limitation. [REDACTED] has not alleged that the Board violated OMA by enforcing a two-minute limit, and has specifically informed this office that she is not contending that its enforcement of the two-minute rule violated OMA. Indeed, the recording establishes that the Board ultimately allowed [REDACTED] to complete her public comment. Therefore, we will not address the propriety of that interruption.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 5, 2019

Via electronic mail
Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: OMA Request for Review – 2019 PAC 56456

Dear Mr. Allen:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons that follow the Public Access Bureau has determined that this Request for Review is unfounded.

Your Request for Review alleges that the Coles County Board (Board) violated section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) because its January 8, 2019, amendment to its December 18, 2018, special meeting minutes, regarding the starting date of an Interim State's Attorney, did not accurately reflect the actions taken by the Board during its December 18, 2018, special meeting. As part of your Request for Review, you provided copies of the minutes of the December 18, 2018, special meeting and the January 8, 2019, meeting. You also provided links to video recordings of a portion of the December 18, 2018, special meeting, taken after the Board returned from its executive session, and of the January 8, 2019, meeting. This office has reviewed the minutes and the relevant portions of the video recordings.

Section 2.06(a) of OMA, provides, in pertinent part:

All public bodies shall keep written minutes of all their meetings, whether open or closed * * *. Minutes shall include, but need not be limited to:

(3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

Mr. Kirk Allen
February 5, 2019
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Prior to any amendments, the minutes of the December 18, 2018, special meeting, state that the Board went into executive session "to discuss the Appointment of Interim States Attorney to fill the position of Brian Bower States Attorney."¹ After returning to open session, the Board minutes reflect that Chairman Zuhone appointed and the Board approved "Jesse Danley to serve as Interim State's Attorney[.]"² Although the minutes do not contain a starting date for Mr. Danley to begin as Interim State's Attorney, a plain reading of the minutes as a whole establish that the Board appointed Mr. Danley to serve as Interim State's Attorney to fill the position of the current State's Attorney upon vacation of that position. Any other interpretation would be illogical as the Interim State's Attorney could not fill Mr. Bowers' position until he left office. As you state in your Request for Review, if the start date for the Interim State's Attorney's began on December 18, 2018, rather on when the position was vacated, there would be two state's attorneys. The January 8, 2019, minutes establish that the Board passed a motion to amend the minutes of December 18, 2018, meeting "to add clarification on the starting time of Jesse Danley's appointment. Jesse Danley will start as Interim States Attorney as soon as Brian Bower exits his position."³ Adding such clarification in the minutes of the obvious intention of the resolution did not violate OMA.

This file is closed. Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

56456 o unf co

cc: *Via electronic mail*
Mr. Mike Zuhone, Chair
Coles County Board
651 Jackson Ave, Room 326
Charleston, Illinois 61920
countyboard@co.coles.il.us

¹Coles County Board, Meeting, December 18, 2018, Minutes 1.

²Coles County Board, Meeting, December 18, 2018, Minutes 1.

³Coles County Board, Meeting, January 8, 2018, Minutes 1.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 6, 2019

Via electronic mail



Via electronic mail

The Honorable Robert J. Wunderlich
Chairman, Board of Trustees
Joliet Junior College
1215 Houboldt Road
Joliet, Illinois 60431
trustees@jjc.edu

Via electronic mail

Mr. Todd K. Hayden
Attorney for Joliet Junior College
Robbins Schwartz
631 East Boughton Road, Suite 200
Bolingbrook, Illinois 60440
thayden@robbins-schwartz.com

RE: OMA Request for Review – 2015 PAC 37874

Dear [REDACTED] Chairman Wunderlich, and Mr. Hayden:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On October 6, 2015, this office received [REDACTED] Request for Review alleging that the Board of Trustees (Board) of Joliet Junior College (College) violated OMA by taking final action during its August 25, 2015, meeting on an item that was not on the agenda. Specifically, she alleged that the agenda contained an action item to select a single

[REDACTED]
The Honorable Robert J. Wunderlich
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replacement trustee but that the Board "spontaneously accepted the abrupt resignation of two trustees '[j]on the spot' and subsequently, without public notice, determined the method to be utilized to replace the two new 'vacancies[.]'"¹ She also stated that the College issued a press release about the single vacancy on August 17, 2015, and that it "included a quote from [College] President Daniels asserting to the effect that [College] trustees are dynamic visionary leaders for the college."² She alleged that "[t]he portrayal of [College] trustees as visionary leaders contradicts both the [College's] code of ethics and code of conduct. Therefore, if the code of conduct or code ethics were revised to allow active engagement in leadership of the college, such changes were not reviewed in a public forum."³ She further alleged that unspecified changes to unspecified sections of the code of ethics/code of conduct did not align with "the sections regarding protocol of board involvement in affairs of college operations."⁴

As a threshold matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). OMA concerns the transparency with which public bodies meet and conduct business in relation to the public; it does not govern the substance of a code of ethics/code of conduct. Further, a Request for Review must include a summary of facts supporting the allegation that a public body violated OMA. 5 ILCS 120/3.5(a) (West 2016). [REDACTED] did not provide facts supporting the allegation that the Board violated OMA in connection with the code of ethics/code of conduct; she did not identify any deficiencies with any particular meeting or set forth information indicating that the Board held an improper private meeting concerning that topic. Accordingly, this office took no further action with respect to those claims.

As to the remaining allegation that the Board took action on an item that was not on the agenda, this office forwarded a copy of [REDACTED] Request for Review to the Board on October 28, 2015, and asked it to provide this office with copies of the August 25, 2015, meeting agenda and minutes, together with a response to the allegations pertaining to that meeting. On November 10, 2015, this office received a written response from the Board's attorney, Mr. Todd Hayden, and the requested meeting materials. On April 15, 2016, this office forwarded a copy of the response to [REDACTED] she replied on April 19, 2016.

¹E-mail from [REDACTED] to Sarah Pratt (October 6, 2015).

²E-mail from [REDACTED] to Sarah Pratt (October 6, 2015).

³E-mail from [REDACTED] to Sarah Pratt (October 6, 2015).

⁴E-mail from [REDACTED] to Sarah Pratt (October 6, 2015).

[REDACTED]
The Honorable Robert J. Wunderlich
Mr. Todd K. Hayden
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Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not define "final action," and no Illinois court has precisely defined that term. However, in *Gosnell v. Hogan*, 179 Ill. App. 3d 161 (5th Dist. 1989), the court examined whether a board's decision in closed session to authorize a request for mediation as an alternative to the negotiations it had been conducting with the secretaries' union was a final action, and concluded that it was not; instead, the board's authorization of mediation was merely a step towards reaching final action on the union's contract. See *Gosnell*, 179 Ill. App. 3d at 176 ("Mediation, similar to negotiating, is not an end in itself, but rather, a means to an end. Negotiations and mediations are made up of many 'unilateral' decisions, such as what to offer or counteroffer, and to hold that each of the unilateral strategic decisions that make up the constituent parts of a negotiation is in and of itself a final action is unreasonable."). Accordingly, "final action" generally must bring a matter to a resolution. Compare *Davis v. Board of Education of Farmer City – Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978) (adoption of resolution in closed session stating tentative intent to terminate superintendent's employment "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action[,] where the board subsequently took final action to terminate the superintendent's employment in open session); with *Kosoglad v. Porcelli*, 132 Ill. App. 3d 1081, 1092 (1st Dist. 1985) (vote to remove commissioner from police board in open session was final action);⁵ see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 ("[A] component of a public body's process of reaching final action generally does not, itself, constitute final action.").

In the Board's written response, Mr. Hayden stated that the Board typically holds both a Workshop meeting and a regular Board meeting once a month, and that the Board's August 25, 2015, meeting was a Workshop meeting. According to Mr. Hayden, a Workshop meeting "generally involves discussion of items, but no action."⁶ Mr. Hayden stated that at the meeting in question, two trustees "announced that they were resigning their positions on the

⁵For an analogous articulation of "final action" outside of the OMA context, see *U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1813 (2016) (final agency action "[f]irst * * * must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S. Ct. 1154, 1168 (1997))).

⁶Letter from Todd K. Hayden, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (November 10, 2015), at 1.

[REDACTED]
The Honorable Robert J. Wunderlich
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Board and immediately exited the meeting[.]”⁷ The Board acknowledged that it had discussed the process for filling the new vacancies but contended that it took no final action:

The remainder of this Board Workshop involved only discussion by the Board (except to appoint a Chair pro tempore). No vote was taken by the Board to accept the resignations of the two Trustees and no vote was taken by the Board to approve a process to fill the new board vacancies. The Board did discuss what process it might follow to fill the new vacancies but did not vote or take any action on that issue[.]”^[8]

The Board asserted that it had previously decided on a process to fill a vacancy left by another trustee and therefore its August 25, 2015, discussion “simply reflected the Board's desire to use that same process for the newly created vacancies that evening, and to include candidates who applied for the first vacancy in the pool for the new vacancies.”⁹ Additionally, the Board argued that it could not have “accepted” or otherwise taken action on the resignation of the two trustees at the meeting because a resignation is “self-executing upon its submission.”¹⁰

In reply, [REDACTED] disputed the Board's assertion that it did not take any action to approve a process for filling the vacancies left by the two trustees who resigned. She argued, in pertinent part:

The dialogue that took place among the [College's] Board, * * *, was, in part, related to the methodology to be used to fill two “unexpected” vacancies on the [College's] Board that occurred at the August 25, 2015 workshop. * * *

⁷Letter from Todd K. Hayden, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (November 10, 2015), at 1.

⁸Letter from Todd K. Hayden, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (November 10, 2015), at 1.

⁹Letter from Todd K. Hayden, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (November 10, 2015), at 1-2.

¹⁰Letter from Todd K. Hayden, Robbins Schwartz, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (November 10, 2015), at 2.

[REDACTED]
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The course of action to fill the unexpected vacancies, which was determined at the August 25, 2015 workshop, was immediately acted-upon by [College] President Deb Daniels the following day or shortly thereafter, in the form of an official press release announcing the process determined (implicit-by the Board) for filling the two new vacancies.^[11]

This office has reviewed the agenda and minutes of the August 25, 2015, Workshop meeting. The minutes reflect that two trustees resigned at the start of the meeting, and that the remaining trustees later discussed how to fill the vacancies.¹² The minutes state that there was a recommendation "to follow the same method used in the first board vacancy[.]" and that "[t]he Board agreed that the first pool of candidates will roll over and be included with any additional candidates received for these two board seat vacancies."¹³ The minutes further state that the Board would convene a special meeting the following week "for the purpose of reorganizing the Board."¹⁴

This office has also reviewed the press release [REDACTED] referenced in her reply. The press release, issued on August 26, 2015, states that the College was "seeking dynamic individuals who are interested in filling three vacancies on the Board of Trustees[.]"¹⁵ The press release further states that "[i]nterested candidates must be a U.S. citizen, 18 years of age or older, and resident of District 525 for at least one year immediately preceding the date of appointment."¹⁶ It then instructed interested candidates to submit a letter of intent and résumé by September 4, 2015.

¹¹E-mail from [REDACTED] to Benjamin Reed, Asst. Attorney General, Office of the Attorney General, Public Access Bureau (April 19, 2016).

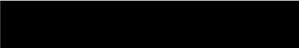
¹²Joliet Junior College Board of Trustees, Workshop Meeting, August 25, 2015, Minutes 1.

¹³Joliet Junior College Board of Trustees, Workshop Meeting, August 25, 2015, Minutes 3.

¹⁴Joliet Junior College Board of Trustees, Workshop Meeting, August 25, 2015, Minutes 3.

¹⁵Joliet Junior College NewsRoom, *JJC Accepting Applications for Trustee Vacancies Through Sept. 4* (August 26, 2015), <http://news.jjc.edu/2015/08/jjc-board-of-trustees-accepting-applications-for-trustee-vacancies-through-sept-4/>.

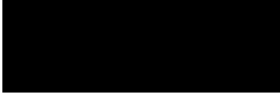
¹⁶Joliet Junior College NewsRoom, *JJC Accepting Applications for Trustee Vacancies Through Sept. 4* (August 26, 2015), <http://news.jjc.edu/2015/08/jjc-board-of-trustees-accepting-applications-for-trustee-vacancies-through-sept-4/>.


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This office agrees that because the trustees' resignations were final at the time that they were announced during the meeting, the Board did not take final action as to their Board membership. In addition, the available information indicates that the Board took only a preliminary step towards filling the vacancies during its August 25, 2015, Workshop meeting rather than final action. Even assuming the Board reached consensus on filling the new vacancies by using the same method it was using to fill the existing vacancy, the method for filling the vacancies was only a component of the Board's process of taking final action on the appointment of new trustees. Because the Board's apparent adoption of a recommendation concerning the method by which to select new trustees did not amount to final action on the matter of filling the vacancies, this office is unable to conclude that the Board violated section 2.02(c) of OMA.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 6, 2019

Via electronic mail



Via electronic mail

Mr. Trygve Thomas Meade
Meade Law Office, P.C.
3106 North Main Street
Canton, Illinois 61520
firm@meadelawpc.com

Re: OMA Request for Review – 2018 PAC 50750

Dear [REDACTED] and Mr. Meade:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Board of Trustees (Board) of Pleasant Township (Township) violated OMA by prohibiting a member of the public from addressing the Board during its December 6, 2017, meeting.

On December 11, 2017, [REDACTED] submitted a Request for Review alleging that the Board did not allow him to address it during its December 6, 2017, meeting because he did not fill out a form providing the topic he wished to speak about and his signature.¹ On

[REDACTED] also alleged that the Board violated OMA by (1) not holding a public hearing at the site of a road closure, and (2) commingled a budget hearing with a regularly scheduled meeting. No provision of OMA requires a public body to hold a meeting at the site of road closure, nor does OMA govern the commingling of meetings. To the extent that the Request for Review could be construed to allege violations of procedures required by other statutes or rules, those allegations are not subject to review by the Public Access Counselor. See 15 ILCS 205/7(c)(3) (West 2016) (limiting the Public Access Counselor's authority to resolve disputes to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016))).

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December 21, 2017, the Public Access Bureau forwarded a copy of the Request for Review to the Township Supervisor and requested a detailed written response to ██████████ allegations, together with copies of the minutes, any recordings of the meetings, a copy of the Board's rules regarding public comment, and the public comment form.

In a letter dated January 16, 2018, the Township's outside counsel submitted a written response, on behalf of the Township, and provided the Public Access Bureau with copies of the agenda and minutes of the Board's December 6, 2017, meeting, its rules regarding public comment, and a copy of the sign-in form from the December 6, 2017, meeting, which contains an illegible signature and an illegible topic for discussion. The Township's public comment rules provide in pertinent part:

1. **Sign in sheet.** Any person who wishes to make comment during the relevant portion of a township meeting must write their name and the topic of comment on a sheet provided for that purpose prior to the meeting. If their name and topic does not appear on the sheet at the beginning of the meeting they may not make any comment at that meeting.^[2]

This office forwarded a copy of the Township's response letter to ██████████ he replied on January 22, 2018. ██████████ also provided this office with an audio recording of the December 6, 2017, meeting.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Indeed, the Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, a board may adopt rules to maintain order and decorum at public

²Pleasant Township, Fulton County, Ill., Ordinance Concerning Public Participation in Township Meetings, Ordinance No. 2017-7, enacted November 1, 2017.

██████████
Mr. Trygve Thomas Meade
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meetings to ensure that meetings are conducted efficiently. *See Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-0012, at 5 (a public body may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum). However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, at 923-25 (N.D. Ill. 2009).

A rule that promotes order and decorum by requiring members of the public to sign up in advance to address a public body does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Timmon v. Jeffries*, No. 1:08-CV-645, 2009 WL 270043, at *3 (W.D. Mich. Jan. 30, 2009) (collection of sign-up forms immediately before public comment portion of meeting was a permissible narrowly tailored restriction) *see also Bach v. School Board of City of Virginia Beach*, 139 F. Supp. 2d 738, 741 (E.D. Va. 2001) (requiring speakers to sign-up in advance of meeting is a reasonable content neutral regulation). However, an advance sign up rule that is enforced to prevent a member of the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the Board was required to post its agenda, imposed an unreasonable restriction on public comment).

In this instance, the Township's public comment rule requires a member of the public who wishes to address public officials during an open meeting to write his or her name on a sign-in sheet at the beginning of the meeting. As written, that portion of the public comment rules appears to be a reasonable rule which facilitates running a timely and orderly meeting; knowing how many people wish to speak and in what order to call participants may promote efficiency. However, the Township provided no information which suggests that the Board used its sign-up rule to run a timely and orderly meeting; rather the evidence establishes that the Board used its sign-up rule for the purpose of prohibiting public comment from ██████████

The meeting minutes reflect that two members of the public attended the December 6, 2017, meeting, one of whom was ██████████³ In response to questions from an Assistant Attorney General in the Public Access Bureau, ██████████ stated that he was the former ██████████ of the Township for 16 years and that the Board members knew him, but the Township Supervisor denied him the right to address the Board because his signature was not legible.⁴ This office has listened to that portion of the audio recording of the December 6, 2017,

³Pleasant Township Board of Trustees, Meeting, December 6, 2017, Minutes 1.

⁴E-mail from ██████████ to Edie Steinberg, [Assistant Attorney General, Public Access Bureau] (January 2, 2019).

██████████
Mr. Trygve Thomas Meade
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Board meeting which concerns signing up for public comment. Early in the meeting, the Township Supervisor asked persons to sign in if they desire to speak; ██████████ and the Supervisor debated that requirement. Later, after announcing it was time for public input, the Supervisor stated "We have a sign in sheet that has just a scribble on it. So this is not an actual signature. My opinion is that this is not a legible signature, deliberately * * * so we will move on."⁵ The Township's response to this office explained that "[b]ecause ██████████ refused to follow the rules established by Pleasant Township in Ordinance No. 2017-7, * * * ██████████ was not allowed to speak."⁶

Rather than asking the two members of the public if either had signed up to speak, and if so, allowing that person to address the public officials, the Board simply denied ██████████ statutory right to speak because his signature was illegible. The Board did not provide any information indicating why the need for a legible signature was necessary to promote order and decorum at the meeting, or to further any other significant governmental interest, especially when it was readily apparent that ██████████ had marked the sign-up sheet. Because the Board applied its advance sign-up rule in a manner that unreasonably restricted the right to address public officials, this office concludes that the Board violated section 2.06(g) of OMA during its December 6, 2017, meeting.⁷

In accordance with the conclusions of this letter, the Public Access Bureau requests that the Board provide an opportunity for the public to address it at all future meetings. We remind the Board that rules which are used for the purpose of prohibiting public comment rather than accommodating the right to address public officials impermissibly restrict the public's statutory right to address the Board. Many public bodies that use sign-in sheets will also allow comment from other members of the public when time permits. This office suggests that the Board establish a less restrictive policy for public comment.

⁵Pleasant Township Board of Trustees, Meeting, December 6, 2017, Audio Recording.

⁶Letter from Trygve Thomas Meade to Edie Steinberg, [Assistant Attorney General,] Office of the Public Access Counselor (January 16, 2018), at 1.

⁷This determination is limited to the Board's denial of an individual's right to address the Board pursuant to its rule requiring advance sign-up by a prospective commenter at the start of a meeting; this determination does not assess the propriety of the remainder of the Board's public comment provisions. However, we note that requiring a member of the public to set forth the topic of his or her comment in writing in advance of a meeting may create a chilling effect on speech at public meetings. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 7 (a rule requiring members of the public to provide a complete home address prior to speaking would exceed the scope of rulemaking under section 2.06(g) because it may have a chilling effect on persons who wish to speak at public meetings). Therefore, the Board may wish to review its public comment rules to ensure that they don't impermissibly restrict the public's statutory right to address the Board.

[REDACTED]
Mr. Trygve Thomas Meade
February 6, 2019
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5201.

[REDACTED]
Verzina, [REDACTED]
[REDACTED]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

50750 o 206g improper pub comment mun

cc: Ms. Nancy Webb
Supervisor
Pleasant Township
P.O. Box 230
Ipava, Illinois 61441

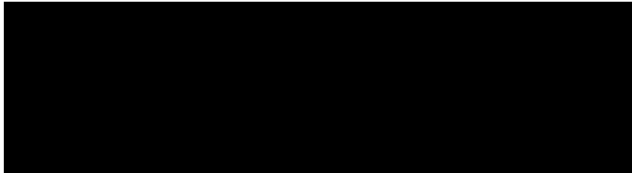


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 6, 2019

Via electronic mail



Via electronic mail

Mr. Donald J. Storino
Storino, Ramello & Durkin
9501 West Devon Avenue
Rosemont, Illinois 60018
don@srd-law.com

RE: OMA Requests for Review – 2018 PAC 52254; 2018 PAC 53194

Dear [REDACTED] and Mr. Storino:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On March 16, 2018, [REDACTED] submitted a Request for Review (2018 PAC 52254) to the Public Access Bureau alleging that the Development, Planning, and Zoning Committee (Committee) of the City Council of the City of Elmhurst (City) violated section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)), which provides:

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other

than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

██████████ stated that he had submitted a Freedom of Information Act (FOIA) request to the City seeking a copy of the minutes of the most recent meeting in which the Committee had performed a review of its closed session minutes. He stated that on March 14, 2018, the City had responded that it had no responsive documents. This office forwarded a copy of the Request for Review to the Committee and its counsel responded that "we have not been able to determine Committee compliance with section 2.06(d)" of OMA but had placed the semi-annual review of its closed session minutes on its April 9, 2018, meeting agenda.¹ ██████████ replied that during that meeting, the Committee had voted to approve the closed session minutes from 2017 rather than to keep them confidential.

On May 17, 2018, ██████████ submitted a subsequent Request for Review (2018 PAC 53194) following up on 2018 PAC 52254 by alleging that the Committee had since failed to perform a semi-annual review of the closed session minutes of four meetings (May 22, 2017, June 26, 2017, July 10, 2017, and August 14, 2017) within 60 days of discovering on March 14, 2018, that it had not strictly complied with section 2.06(d) of OMA. Discussing his allegations concerning several committees at once, he contended:

The committees finally scheduled meetings on May 14, 2018 to review many (but not all) of the closed session minutes. However, I argue that they missed the deadline. The committees should have reviewed their closed session minutes within 60 days of March 14, 2018. This deadline would have been May 13, 2018. Since the committees conducted no such review and determination in open session by that date, then I believe that OMA has been violated.^[2]

¹Letter from Donald J. Storino, City Attorney, City of Elmhurst, to S. Piya Mukherjee, Assistant Attorney General, State of Illinois, Public Access Bureau (April 6, 2018), at 1.

²Letter from ██████████ to Sarah Pratt, Public Access Counselor, Office of the Attorney General (May 17, 2018).

██████████
Mr. Donald J. Storino
February 6, 2019
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On March 30, 2018, and June 5, 2018, this office forwarded copies of the Requests for Review to the Committee and asked it to address whether it had met the requirements of section 2.06(d) of OMA. On April 6, 2018, and June 12, 2018, this office received the Committee's written responses to the two matters and copies of the Committee's April 9, 2018, and May 14, 2018, meeting agendas and minutes. On April 24, 2018, and June 18, 2018, this office forwarded copies of the written responses to ██████████. He replied on June 21, 2018, moving up the alleged date of the Committee's discovery of its non-compliance, and sent follow-up correspondence on July 4, 2018.

In its June 12, 2018, response to this office, the Committee contended that it had "discovered that it had not reviewed its 2017 closed session meeting minutes at its public meeting on April 9, 2018, when there were Agenda items for the Committee to approve its closed session meeting minutes from [the four meetings in question] and to determine whether to maintain these closed session meeting minutes as confidential."³ The Committee stated that it subsequently discussed and voted in open session at its May 14, 2018, meeting to find that the need for confidentiality still existed for the closed session minutes of the four meetings. The Committee disputed ██████████ claim regarding when it learned of the violation, arguing, in relevant part: "The City's FOIA Officer is not the Committee and is not a member of the Committee. As such, the Committee did not discover its failure to strictly comply with Section 2.06(d) of OMA on March 14, 2018, when the City's FOIA Officer responded to ██████████ FOIA request."⁴

In reply to that response, ██████████ moved up the alleged date of the Committee's discovery of the violation to March 1, 2018. He provided this office with a copy of a March 1, 2018, e-mail between the City's deputy clerk and one of the City's attorneys concerning his FOIA request. On July 4, 2018, ██████████ contacted this office and further contended: "[S]ince I allege that the [Committee] took more than 60 days to review the closed session minutes, I also contend that the minutes and recordings should be released."⁵

This office has recently issued a determination in a similar Request for Review (2018 PAC 53683) submitted by ██████████ in which he alleged that the City's Zoning and Planning Commission (Commission) had failed to perform a semi-annual review of the closed session minutes from its September 28, 2017, meeting within 60 days of discovering that violation. In

³Letter from Donald Storino, City Attorney, City of Elmhurst, to Teresa Lim, Assistant Attorney General, State of Illinois, Public Access Bureau (June 11, 2018), at 2.

⁴Letter from Donald Storino, City Attorney, City of Elmhurst, to Teresa Lim, Assistant Attorney General, State of Illinois, Public Access Bureau (June 11, 2018), at 3.

⁵E-mail from ██████████ to [Teresa] Lim (July 4, 2018).

██████████
Mr. Donald J. Storino
February 6, 2019
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that matter, ██████████ likewise argued that the Commission became aware of the violation based, in part, on his FOIA request, while the Commission disputed that claim. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3. This office noted that the Commission did not address when its attorneys first learned of the violation or whether that knowledge could be imputed to the Commission, but also stated that "[t]he materials ██████████ submitted to this office do not definitively establish when the Commission's attorneys learned of the violation." Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3. Because of the conflicting facts, there was insufficient evidence for this office to conclude that the Commission violated section 2.06(d). Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3.


In this matter, this office is likewise unable to establish, based on the information submitted by both parties, the date on which the Committee or its attorneys became aware that the Committee had not performed a semi-annual review of its closed session minutes. The City's March 14, 2018, response to ██████████ FOIA request and the City's preparation of that response do not demonstrate that the Committee and/or its attorneys learned of the lack of review on March 1, 2018, or March 14, 2018. Rather, it appears that the Committee and/or its attorneys may have learned of the alleged violation upon receipt of this office's inquiry letter in 2018 PAC 52254, which was sent by regular mail on March 30, 2018. Accordingly, this office cannot conclude that the Committee violated section 2.06(d) of OMA by failing to review the closed session minutes within 60 days of discovering its initial violation.⁶

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

████████████████████
TERESA LIM
Assistant Attorney General
Public Access Bureau

⁶Even assuming that this office found that the Committee failed to review its closed session minutes within 60 days of discovering its technical violation, no remedial action is necessary. This office's review of the Committee's May 14, 2018, meeting minutes confirmed that the Committee subsequently performed a review of the closed session minutes at issue. Further, this office has previously concluded that OMA does not require a public body to remedy a failure to review closed session minutes within 60 days of discovering a technical violation of section 2.06(d) by releasing all of its unreviewed minutes. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 52812, issued August 28, 2018.


Mr. Donald J. Storino
February 6, 2019
Page 5

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 6, 2019

Via electronic mail



Via electronic mail

Mr. Donald J. Storino
Storino, Ramello & Durkin
9501 West Devon Avenue
Rosemont, Illinois 60018
don@srd-law.com

RE: OMA Request for Review – 2018 PAC 52919

Dear [REDACTED] and Mr. Storino:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On April 30, 2018, this office received [REDACTED] Request for Review alleging that the Finance, Council Affairs, and Administrative Services Committee (Committee) of the City Council of the City of Elmhurst (City) violated section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)), which provides:

Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. The failure of a public body to strictly comply with the semi-annual review of closed session written minutes * * * shall not cause the written minutes or related verbatim record to become public or available for inspection in any judicial proceeding, other

than a proceeding involving an alleged violation of this Act, if the public body, within 60 days of discovering its failure to strictly comply with the technical requirements of this subsection, reviews the closed session minutes and determines and thereafter reports in open session that either (1) the need for confidentiality still exists as to all or part of the minutes or verbatim record, or (2) that the minutes or recordings or portions thereof no longer require confidential treatment and are available for public inspection.

██████████ stated that he had submitted a Freedom of Information Act (FOIA) request to the City seeking a copy of the minutes of the most recent meeting in which the Committee had performed a review of its closed session minutes. He stated that the City responded on March 14, 2018, that it had no responsive documents. ██████████ contended that: (1) the Committee had failed to perform a semi-annual review of the closed session minutes of its September 25, 2017, May 12, 2014, and February 8, 2016, meetings; and (2) the City had discovered "its error on March 14, 2018, when the Deputy Clerk and FOIA Officer for Elmhurst responded to [his] FOIA request with no records."¹ Therefore, he argued that the Committee had until May 13, 2018—60 days from March 14, 2018—to correct that oversight.

On May 9, 2018, this office forwarded a copy of the Request for Review to the Committee and asked it to address whether it had met the requirements of section 2.06(d) of OMA. On May 24, 2018, this office received a written response and additional materials from the Committee's April 9, 2018, May 14, 2018, and upcoming May 29, 2018, meetings. On May 30, 2018, this office forwarded a copy of the Committee's written response to ██████████ he replied on June 10, 2018, and sent this office additional correspondence on June 21, 2018, and July 4, 2018.

In its response to this office, the Committee stated that it had voted to maintain the confidentiality of its September 25, 2017, closed session minutes at its May 14, 2018, meeting. As to the remaining closed session minutes at issue, the Committee stated that it planned to review whether those minutes should remain confidential at its May 29, 2018, meeting. The Committee disputed ██████████ claim regarding when it became aware of the technical violation, arguing, in pertinent part:

The public body that ██████████ wants to impute this knowledge to is the Committee. The City's FOIA Officer is not the Committee and is not a member of the Committee. As such, the Committee did

¹Letter from ██████████ to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 29, 2018).

Mr. Donald J. Storino
February 6, 2019
Page 3

not discover its failure to strictly comply with Section 2.06(d) on March 14, 2018, when the City's FOIA Officer responded to [REDACTED] FOIA request. The earliest date that may be assigned is when the Committee Chairman received this [inquiry letter from the Public Access Bureau regarding] 2018 PAC 52919 dated May 9, 2018, which occurred on Wednesday, May 16, 2018.^[2]

In reply, [REDACTED] contended that the Committee learned of the violation earlier than the May 16, 2018, date. He provided this office with a copy of an April 6, 2018, e-mail that he sent to the Committee Chairman, Alderman Kevin York. In the e-mail, [REDACTED] stated:

I sent you an email through the City's website earlier today regarding the review of closed session minutes for the * * * Committee.

Since then, I realized that I neglected to include one other meeting that I noticed. Here is the complete list that I have for [the Committee] before 2017:
5/12/14
2/8/16

Hopefully you will be able to include both of these meetings in the * * * Committee's review of closed minutes, if you haven't already voted to release them.^[3]

On April 9, 2018, Alderman York replied to [REDACTED] "We are working through all of the minutes and will do our best to dispose of all of them over the next couple to three meetings. Thanks for bringing these to our attention!"⁴ [REDACTED] argued that the "matter was not resolved 'over the next couple to three meetings', as Chairman York originally promised."⁵ On June 21, 2018, [REDACTED] contacted this office, moving up the alleged date of the Committee's discovery of the violation to March 1, 2018. He provided this office with a copy of a March 1, 2018, e-mail between the City's deputy clerk and one of the City's attorneys regarding his FOIA request. On

²Letter from Donald J. Storino, City Attorney, City of Elmhurst, to Teresa Lim, Assistant Attorney General, State of Illinois, Public Access Bureau (May 24, 2018), at 2.

³E-mail from [REDACTED] to Ald. York (April 6, 2018).

⁴E-mail from Kevin York, Alderman 4th Ward, City of Elmhurst, to [REDACTED] (April 9, 2018).

⁵E-mail from [REDACTED] to [Teresa] Lim (June 10, 2018).

██████████
Mr. Donald J. Storino
February 6, 2019
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July 4, 2018, ██████████ contacted this office and further asserted: "[S]ince I allege that the Committees took more than 60 days to review the closed session minutes, I also contend that the minutes and recordings should be released."⁶

This office has recently issued a determination in a similar Request for Review (2018 PAC 53683) submitted by ██████████ in which he alleged that the City's Zoning and Planning Commission (Commission) had failed to perform a review of the closed session minutes from its September 28, 2017, meeting within 60 days of discovering that it had not done so. In that matter, ██████████ similarly argued that the Commission became aware of the violation as a result of his FOIA request, while the Commission disputed that claim. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3. This office noted that the Commission did not address when its attorneys first learned of the technical violation or whether that knowledge could be imputed to the Commission, but also stated that "[t]he materials ██████████ submitted to this office do not definitively establish when the Commission's attorneys learned of the violation." Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3. Because of the conflicting facts, there was insufficient evidence for this office to conclude that the Commission violated section 2.06(d). Ill. Att'y Gen. PAC Req. Rev. Ltr. 53683, at 3.

As was the case in 2018 PAC 53683, the Committee here does not challenge ██████████ claim that it had not performed a semi-annual review of the closed session minutes from the three meetings in question. The facts in this matter also do not definitively demonstrate that either the Committee or its attorneys learned of the technical violation on March 1, 2018, or March 14, 2018. While the April 9, 2018, e-mail exchange between ██████████ and Chairman York suggests that the Committee became aware of the issue regarding the closed session minutes around that time rather than on the date of the Committee's receipt of this Request for Review, it appears that the Committee performed a review of the closed session minutes of the three meetings within 60 days of that e-mail exchange. This office's review of the Committee's May 14, 2018, meeting minutes and May 29, 2018, meeting agenda indicated that the Committee completed its semi-annual review of the closed session minutes at issue. Accordingly, although the Committee did not timely perform a semi-annual review of all its closed session minutes as required under section 2.06(d) of OMA, this office is unable to conclude that the Committee failed to remedy that violation within 60 days of discovering its non-compliance.⁷


⁶E-mail from ██████████ to [Teresa] Lim (July 4, 2018).

⁷Even if the Committee had not reviewed all of its closed session minutes within 60 days of discovering the technical violation, this office has previously concluded that OMA does not require a public body to remedy a failure to review closed session minutes within 60 days of discovering a technical violation of section 2.06(d) by releasing all of its unreviewed minutes. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 52812, issued August 28, 2018.


Mr. Donald J. Storino
February 6, 2019
Page 5

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 6, 2019

Via electronic mail

Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: OMA Request for Review – 2019 PAC 56569

Dear Mr. Allen:

On January 22, 2018, the Public Access Bureau received your Request for Review alleging that the Algonquin Township Board of Trustees (Board) violated the Open Meetings Act (OMA), 5 ILCS 120/1, *et seq.* (West 2016), in connection with its January 19, 2018, special meeting. Your Request for Review was opened as 2018 PAC 51317.

On January 25, 2019, this office received correspondence from you regarding your allegations concerning the Board's January 19, 2018, special meeting, which this office opened as Request for Review 2019 PAC 56569. However, because both Requests for Review concern the same allegations regarding the January 19, 2018, special meeting, 2019 PAC 56569 will be closed as a duplicate file. All correspondence concerning the Public Access Bureau's review of your allegations concerning the Board's January 19, 2018, special meeting should reference 2018 PAC 51317, as that matter is still under review by this office.

Please contact me at (217) 524-7958, LHarter@atg.state.il.us, or the Springfield address on this letter if you have questions. Thank you.

Very truly yours,

A black rectangular redaction box covers the signature of Laura S. Harter.

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

56569 o dup mun

Mr. Kirk Allen
February 6, 2019
Page 2

cc: *Via electronic mail*
Mr. Jim Kelly
Matuszewich & Kelly, LLP
101 North Virginia Street, Suite 150
Crystal Lake, Illinois 60014
jpkelly@mkm-law.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 7, 2019

Via electronic mail

[REDACTED]
P.O. Box 134
Nauvoo, Illinois
[REDACTED]

RE: OMA Request for Review – 2018 PAC 52302

Dear [REDACTED]

The Public Access Counselor has received your Request for Review concerning an alleged Open Meetings Act (OMA) violation by the Hancock County Board (Board) in connection with its March 20, 2018, meeting. In a February 7, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that this matter may now be closed. Accordingly, this letter serves to close this matter.

If you have questions, please contact me at (217) 785-7438 or at the Springfield address below.

Very truly yours,

[REDACTED]
CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

52302 o inf r co

cc: Hancock County Board
Attention: OMA Designee
500 Main Street
Carthage, Illinois 62321



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 7, 2019

Via electronic mail
Mr. Shawn Logging
Reporter/Multimedia Journalist
WHBF-TV, KLIB-TV
231 18th Street
Rock Island, Illinois 61201
slogging@whbf.com

RE: OMA Request for Review – 2019 PAC 56688

Dear Mr. Logging:

On February 5, 2019, the Public Access Bureau received your Request for Review in which you allege that the Village of Cambridge Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) in connection with its November 27, 2017, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

Your Request for Review alleges that the Board violated OMA during its November 27, 2017, meeting by discussing an item during closed session that was not listed on the meeting agenda. You submitted your Request for Review more than 60 days after the date of that alleged violation, and you have not asserted or provided any facts indicating that you did not discover the alleged violation before the 60-day period expired despite using reasonable

Mr. Shawn Loging
February 7, 2019
Page 2

diligence. Because you did not submit your Request for Review before the statutory period for doing so expired, this office lacks authority to review your allegations concerning the November 27, 2017, meeting.

However, this office has previously concluded that OMA does not require a public body to list a closed session on its agenda. Ill. Att'y Gen. PAC Rev. Ltr. 26777, issued April 2, 2015. Section 2a of OMA (5 ILCS 120/2a (West 2016)) provides: "[a]t any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act." The Illinois Appellate Court has held that the "plain language of section 2a allows a public body to decide during a properly noticed open meeting to go into closed session without any additional notice." *Wyman v. Schweighart*, 385 Ill. App. 3d 1099, 1107 (4th Dist. 2008). Because OMA does not require a public body to provide any notice on its agenda of a closed session, it follows that a public body is not required to list on its agenda all topics that it might discuss during a closed session.

Accordingly, this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or at (217) 524-7958.

Very truly yours,



LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

56688 o no fi war mun

cc: *Via electronic mail*
The Honorable Jason Gustafson
Acting Village President
Village of Cambridge Board of Trustees
124 West Exchange Street
Cambridge, Illinois 61238
jason.gustafson.voc@gmail.com

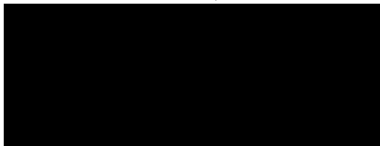


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 11, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56611

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted on this matter.

On January 28, 2019, you submitted a Request for Review to the Public Access Bureau alleging that the Village of Riverdale (Village) Board of Trustees (Board) violated OMA by holding an improper closed meeting to discuss the Village's tax levy ordinance at some point prior to the Board's December 18, 2018, special meeting.¹ You explained that the Board took final action on the tax levy at its December 18, 2018, special meeting, but had never previously discussed the subject during an open meeting.² You assert that none of the Board or Committee of the Whole (Committee) agendas or meeting minutes for the year of 2018 mention the tax levy. You also allege that the subject matter of the tax levy had previously been included on the

¹Your Request for Review alleges the relevant special meeting occurred on December 12, 2018. However, according to the Board's agenda, which is available on the Village's website, this special meeting occurred on December 18, 2018. See Village of Riverdale, Special Board Meeting of the Board of Trustees, Agenda Item V. 1. The Annual Tax Levy Ordinance of the Village of Riverdale Cook County, Illinois for the Fiscal Year Beginning May 1, 2018 and Ending April 30, 2019 (December 18, 2018), available at <http://villageofriverdale.net/minutes-and-agendas/>.

²Your Request for Review does not allege that the Board failed to take action openly in connection with the tax levy, which was an agenda item and the subject of final action at the December 18, 2018, special meeting.

February 11, 2019

Page 2

agenda for the November 13, 2018, Committee meeting, but that the meeting was cancelled³ and that the issue was on the agenda for the November 11, 2018, Board meeting, but that it was not discussed at that meeting because the mayor removed it from the agenda.⁴ You indicate in your Request for Review that during the public comment portion of the December 18, 2018, special meeting, you asked the Board "how the subject on voting to increasing the Tax Levy could be done if it was not discussed in a previous meeting"⁵ to which you state that several members of the Board responded that the issue had been previously discussed but the Board would not answer your question concerning the exact date of the meeting at which the discussion was held.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[t]he request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.)

OMA is intended to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). The requirements of OMA apply to "meetings" held by public bodies. See 5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018 ("All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a."). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "meeting" subject to the Act as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Your Request for Review contends that the Board held an improper closed meeting to discuss the tax levy, but it does not set forth a summary of facts supporting your allegation. Instead, you state that: (1) you do not remember any discussion concerning the tax levy at previous Board meetings; (2) you found no reference to a relevant discussion in the

³According to the agenda and minutes for the Board's Committee of the Whole November 13, 2018, meeting, which are available on the Village's website, the agenda did not include the tax levy subject matter and the meeting does not appear to have been cancelled. See Village of Riverdale Committee of the Whole, Agenda (November 13, 2018); see also Village of Riverdale Committee of the Whole, Meeting, November 13, 2018, available at <http://villageofriverdale.net/minutes-and-agendas/>.

⁴According to the Village's website, it does not appear that the Board held a meeting on November 11, 2018. See <http://villageofriverdale.net/minutes-and-agendas/>

⁵Letter from [REDACTED] to Illinois Assistant State[']s Attorney (January 28, 2019).


February 11, 2019
Page 3

agendas or minutes of previous Board meetings; and (3) that by not answering your questions during the public comment portion of the December 18, 2018, special meeting, the Board failed to provide you with proof that relevant discussions had occurred during open meetings.

To the extent that the Board may have merely **discussed** the issue of the annual tax levy before the December 18, 2018, special meeting, only matters upon which a public body takes final action must be summarized in meeting minutes pursuant to section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)).⁶ See Ill. Att'y PAC Req. Rev. Ltr. 36909, issued September 2, 2015 ("OMA does not require a public body to provide a detailed summary of any matter that was merely *discussed* by a public body if the discussion did not rise to the level of deliberating upon or considering a decision relating thereto." (Emphasis in original.)). Likewise, under section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016))⁷ the Board may properly **discuss and deliberate on subjects** that do not appear on a regular meeting agenda, provided that no final action is taken on those subjects. See *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002). Lastly, while section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) requires the Board to provide an opportunity for members of the public to address public officials at its open meetings, OMA does not require any response by or answers from those public officials. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7. Accordingly, your assertions alone do not establish that the Board conducted an improper closed meeting to discuss the tax levy and you have not provided a summary of facts supporting the allegation that such a meeting occurred. Therefore, the information that you submitted provides no basis from which this office could conclude that the Board held an improper closed meeting to discuss the tax levy.

Accordingly, this office has determined that no further action is warranted on this matter. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter. This letter serves to close this matter.


Very yours truly,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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⁶Section 2.06(a)(3) of OMA requires a public body's meeting minutes to include "a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken."

⁷Section 2.02(a) of OMA provides, in pertinent part, "[t]he requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda."


February 11, 2019.

Page 4

cc: The Honorable Lawrence L. Jackson
President
Board of Trustees
Village of Riverdale
157 West 144th Street
Riverdale, Illinois 60827



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 13, 2019

Via electronic mail
Ms. Julie L. Ajster
Ajster Law Office
P. O. Box 255
Peru, Illinois 61354
ajster@comcast.net

RE: OMA Request for Review – 2019 PAC 56510

Dear Ms. Ajster:

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received January 22, 2019, you alleged that the Peru City Council (City Council) violated OMA in connection with its meeting held the previous day. Specifically, you claimed that the agenda for the meeting, which was posted more than 48 hours in advance of the meeting, listed an item for the purchase of more than 70 acres of land, yet "purchasing said property was never on any previous agenda or discussed at any City Council meeting."¹ You provided a copy of a local newspaper article in which Mayor Scott Harl explained that he had "made phone calls one-on-one with all eight aldermen" about the potential purchase; you argued that this "way of conducting City of Peru business without the need for an open meeting to discuss the matter[]" circumvents both the express requirements and intent of OMA because "when it comes time for an open meeting, all the alderman [sic] need to do is vote[.]"²

¹Letter from Julie L. Ajster, Ajster Law Office, to Public Access Counselor, Illinois Attorney General (January 22, 2019).

²Brynn Twait, *Peru snags 70 acres of farmland near Kohl's*, NewsTribune (Jan. 22, 2019), http://www.newstrib.com/news/peru-snags-acres-of-farmland-near-kohl-s/article_57ab5fbc-1e05-11e9-b70e-d31326825bb1.html.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

Under OMA, deliberations among a majority of a quorum of the members of a nine-member public body like the City Council must be held during a properly-noticed open meeting, unless the topic of the discussion meets one of the exceptions listed in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) and the meeting is properly closed in accordance with section 2a of OMA (5 ILCS 120/2a (West 2016)). 5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018. OMA generally does not govern one-on-one conversations between a mayor and an alderman. Nonetheless, it is conceivable that conversations among less than a majority of a quorum of the members of a public body could be structured in a way that would violate the spirit if not the express requirements of OMA. For instance, in Request for Review 2011 PAC 14722, this office examined circumstances in which three committee members—a majority of a quorum of the committee—attempted to avoid triggering the requirements of OMA by having one member at a time cycle in and out of a room where the other two members would deliberate. This office concluded that "this maneuvering violated the spirit and intent of OMA[.]" as "[f]inding otherwise would have [had] the absurd result of sanctioning secret deliberations and discussions of public business provided that members of a public body rotate in and out of the meeting room to avoid the simultaneous presence of a majority of a quorum." Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, issued August 12, 2011, at 5. This office also noted that the definition of "meeting" in section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) refers to "interactive communication" that is "contemporaneous" in timing rather than "simultaneous," indicating that back-and-forth communications about public business involving a majority of a quorum of the members of a public body may qualify as comprising a meeting if they occur "in the same general time frame[.]" Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, at 4-5.

In this instance, on the other hand, the information you have set forth is insufficient to support the allegation that the City Council violated the letter or spirit of OMA because there is no indication that the mayor's one-on-one conversations amounted to deliberation among a majority of a quorum of the members of the public body. According to the newspaper article, "[Mayor] Harl said the city has been discussing buying this piece of property for five to seven years[.]" and had "been keeping an eye on it[.]"³ When the price for the property dropped significantly, according to Mayor Harl, he phoned aldermen individually and received positive feedback about moving forward with the purchase. No facts have been

³Brynn Twait, *Peru snags 70 acres of farmland near Kohl's*, NewsTribune (Jan. 22, 2019), http://www.newstrib.com/news/peru-snags-acres-of-farmland-near-kohl-s/article_57ab5fbc-1e05-11e9-b70e-d31326825bb1.html.

Ms. Julie L. Ajster
February 13, 2019
Page 3

presented from which this office could conclude that Mayor Harl served as a sort of intermediary relaying various positions among aldermen to each other in a deliberative manner that could have risen to the level of "contemporaneous interactive communication" among a majority of a quorum of the City Council. Although you stated that you regularly attend City Council meetings and that the purchase had never been discussed during any meeting, there are multiple ways in which the City could have considered the possibility of the purchase prior to the January 21, 2019, meeting without violating OMA. For example, City staff members could have discussed the matter among themselves or with just the mayor or with the mayor and a couple of aldermen. Additionally, the City Council could have discussed the matter in closed session under the section 2(c)(5) exception to the general requirement to conduct business openly. *See* 5 ILCS 120/2(c)(5) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018 (permitting a public body to discuss in closed session: "The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.").

Because your Request for Review does not provide a basis from which this office could conclude that the City Council violated OMA in connection with the land purchase it approved during its January 21, 2019, meeting, the Public Access Bureau has determined that no further action is warranted in this matter.

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

56510 o no fi war mun

cc: *Via electronic mail*
The Honorable Scott J. Harl
Mayor
City of Peru
1901 4th Street
Peru, Illinois 61354
sharlmayor@peru.il.us



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 14, 2019

Via electronic mail

Via electronic mail

Ms. Kathleen Elliott
Robbins Schwartz
631 East Boughton Road, Suite 200
Bolingbrook, Illinois 60440-3098
kelliott@robbins-schwartz.com

RE: OMA Request for Review – 2018 PAC 54143

Dear [REDACTED] and Ms. Elliott:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Trustees of the Village of Lisle (Board) violated the requirements of OMA by permitting Trustee Anthony Carballo to attend its July 23, 2018, meeting by telephone and to address the Board, but did not violate OMA by prohibiting [REDACTED] from addressing the Board when he was not physically present at the meeting.

On July 24, 2018, the Public Access Bureau received a Request for Review from [REDACTED] alleging that the Board had discriminated against him at its July 23, 2018, meeting because it did not grant his e-mailed request to make public comment after it had permitted Trustee Carballo to comment by telephone at the same meeting. In particular, [REDACTED] stated that he was viewing the meeting remotely and sent e-mails to the Village manager and to all of the Board members requesting the opportunity to comment by telephone because Trustee Carballo had made "public comment" remotely. [REDACTED] stated that a member of the Board publicly acknowledged his request to comment, but he was not permitted to do so.

On August 6, 2018, the Public Access Bureau sent a copy of the Request for Review to the Board and asked it to respond to [REDACTED] allegation that the Board had not

██████████
Ms. Kathleen Elliott

February 14, 2019

Page 2

allowed him to comment by telephone when it had allowed Trustee Carballo to speak remotely. This office also requested that the Board provide this office with a copy of its rules for public comment and for meeting attendance by means other than physical presence by a Board member. This office did not receive a response from the Board to our August 6, 2018, correspondence. On August 27, 2018, this office sent the Board a second letter requesting that it respond to ██████████ Request for Review. On September 5, 2018, counsel for the Board provided this office with a written answer on behalf of the Board, together with copies of the Board's established and recorded rules for public comment and attendance by other means. On September 7, 2018, this office sent ██████████ a copy of the Board's answer; he submitted a written reply on September 16, 2018.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Authorization for Trustee Carballo's Remote Participation

██████████ Request for Review questioned whether the Board violated OMA by allowing Trustee Carballo to participate at the July 23, 2018, meeting by audio conference even though a motion to allow him to attend the meeting by means other than physical presence was not seconded or otherwise approved.

Section 7 of OMA (5 ILCS 120/7 (West 2017 Supp.)) provides for the attendance of a member of a public body by means other than physical presence in limited circumstances:

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) *A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings. (Emphasis added.)*

Under the plain language of these provisions, a public body with a quorum physically present has the discretion to permit a member who is not physically present to participate in the meeting by audio or video conference for any of the three reasons set forth in section 7(a) of OMA and in accordance with its rules for attendance by other means.

The Board provided this office with a copy of its ordinance adopting procedures for electronic attendance at meetings, Ordinance 2007-4117, adopted June 4, 2007. The Board's rules state that a member that meets the one of the three reasons for being unable to physically attend the meeting "should notify the Village Clerk at least 24 hours before the meeting, unless impractical, so that necessary communications equipment can be arranged."¹ The rules set forth the following procedures for permitting a person to attend electronically:

After establishing that a quorum is physically present at a meeting where a member of the Village desires to attend electronically, the presiding officer shall state that (i) a notice was received by a member of the Village in accordance with these Rules, and (ii) the member will be deemed authorized to attend the meeting electronically unless a motion objecting to the member's electronic attendance is made, seconded and approved by two-thirds of the members of the Village.^[2]

¹Village of Lisle, Electronic Attendance At Meetings Rules, Ordinance No. 2007-4117, June 4, 2007, at 1 (on file with author).

²Village of Lisle, Electronic Attendance At Meetings Rules, Ordinance No. 2007-4117, June 4, 2007, at 1 (on file with author).

Ms. Kathleen Elliott

February 14, 2019

Page 4

The Board's rules further state that a member who is "permitted to attend electronically will be able to express his or her comments during the meeting[, and] shall be heard, considered, and counted as to any vote taken."³

In response to this office's inquiry as to the basis for permitting Trustee Carballo to speak at the meeting, the Board's counsel stated that the Board voted to allow Trustee Robert J. Mandel to attend the meeting by audio conference. However:

Trustee Carballo was not allowed to electronically participate because he did not meet the requirements. Trustee Carballo was allowed to listen to the proceedings, as it was not clear if he could be disconnected without disconnecting Trustee Mandel. Later in the meeting Trustee Carballo requested to make a public comment, which the Village President allowed by vote of the Village Board.^[4]

The Board's response to this office acknowledges that Trustee Carballo was not eligible to attend the July 23, 2018, meeting by audio conference because he did not meet any of the requirements of section 7(a) of OMA. Indeed, this office's review of the video recording of the meeting indicates that the Board questioned Trustee Carballo about the reasons for his not being able to attend the meeting in person and discussed whether he was eligible to attend the meeting by audio conference. A motion was made during the meeting to allow Trustee Carballo to attend the meeting by audio conference but was not seconded by another trustee on the Board. Therefore, Trustee Carballo was not authorized to participate in the meeting electronically.

This office's review of the video recording of the meeting also indicated that the Board had arranged communications equipment so that Trustee Carballo and Trustee Mandel were both on an audio conference call with the other members of the Board at the start of the meeting. When the motion to allow Trustee Carballo to attend the meeting by audio conference failed to receive a second, Trustee Carballo's connection to the Board through an audio conference set up for Board members attending electronically should have been terminated. The Board asserted that it could not disconnect Trustee Carballo from the audio conference without disconnecting Trustee Mandel. However, instead of permitting Trustee Carballo to continue to

³Village of Lisle, Electronic Attendance At Meetings Rules, Ordinance No. 2007-4117, June 4, 2007, at 2 (on file with author).

⁴Letter from Kathleen Elliott, Village Attorney, Robbins Schwartz, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (September 5, 2018), at 1.

participate in the meeting by audio conference, it appears that the Board could have requested that Trustee Carballo hang up his phone or could have disconnected both Trustee Carballo and Trustee Mandel and arranged for Trustee Mandel to rejoin the audio conference with the Board.

Because Trustee Carballo continued to remain on the audio conference with Trustee Mandel and the members of the Board who were physically present, he was able to interrupt the Board later in the meeting to ask whether he was permitted to participate publicly at the meeting. The Board entertained and approved a motion to allow Trustee Carballo to make comments as a member of the public. Trustee Carballo subsequently participated through the Board member only audio connection during public comment periods and made multiple additional requests to comment throughout the meeting. Because Trustee Carballo is, in fact, an elected official and Board member, and not a member of the public during Board meetings, he should not have been allowed to participate electronically during the public comment portion of the meeting. By doing so Trustee Carballo was improperly attending the meeting remotely, notwithstanding that it was clear he was not eligible to attend under the circumstances of his absence.

Although the Board attempted to limit Trustee Carballo's comments at the meeting to the same length of comments that a member of the public who was present at the meeting would be allowed to make and did not allow him to vote, OMA does not distinguish between a member of the public body attending the meeting by other means as a member of the public body and as a member of the public. Instead, OMA provides only for a member of the public body to attend a meeting by other means pursuant to section 7 of OMA. Therefore, the Board's vote to allow Trustee Carballo to participate in the meeting as a member of the public instead of as a member of the Board is a distinction that is not supported by OMA. Moreover, Trustee Carballo's direct connection to the Board that allowed him to participate in the meeting utilized the audio conference equipment set up by the Board for the exclusive use of members of the Board who were not physically present and approved to attend the meeting. His participation in the meeting after the Board declined to approve his request to attend electronically constituted attendance at the meeting. It is undisputed that Trustee Carballo was ineligible to attend the meeting by audio conference. Thus, the Board violated sections 7(a) and 7(c) of OMA by allowing Trustee Carballo to attend its July 23, 2018, meeting remotely.

Public Comment by a Member of the Public not in Physical Attendance

As noted above, the policy of OMA is to guarantee the right of all individuals to attend all meetings of public bodies where business is discussed or acted upon. See 5 ILCS 120/1 (West 2016). As part of the right to attend meetings of public bodies, section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public

Ms. Kathleen Elliott

February 14, 2019

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body." The intention of section 2.06(g) of OMA is provide individuals who attend a meeting of a public body the right to address the officials of that public body under the rules established by the public body. The word "attend" is defined as "to be present at: go to <~ a meeting> <~ college>[.]" Webster's Third New International Dictionary (1993), at 140. Thus, in order "to attend" a meeting of a public body, a person must be present at or go to the location of the meeting.

██████████ alleged that the Board violated OMA because it did not permit him to provide public comment at the July 23, 2018, meeting. ██████████ acknowledged that he did not physically attend the meeting but stated he was streaming the meeting remotely. Although section 7 of OMA provides a mechanism for a member of a public body to attend and participate in a meeting by means other than physical presence, OMA does not provide a similar opportunity for members of the public to attend a meeting by means other than physical presence. Although a public body may elect to allow public comment from individuals who are not physically present at the meeting, the Board's established and recorded rules do not provide for public comment from individuals who are not physically present. Further, no provision of OMA requires the Board to do so. Because only individuals who attend the meeting have the right to address public officials and because ██████████ did not attend the meeting, the Board did not violate section 2.06(g) of OMA at its July 23, 2018, meeting when it did not provide ██████████ with an opportunity to provide public comment in accordance with its established and recorded rules.

There are no means by which the Board can remedy its violation of sections 7(a) and 7(c) of OMA when it allowed Trustee Carballo to continue to attend and participate in the July 23, 2018, meeting. With respect to the Board's violation of sections 7(a) and 7(c), however, section 7 provides that "[a] majority of the public body *may allow* a member to attend a meeting[.]" These violations can be avoided in the future if the Board alters its rules to require a majority vote of its membership prior to allowing remote attendance rather than permitting such attendance unless the Board takes action to deny the request. This office requests that the Board comply with the requirements of sections 7(a), 7(b), and 7(c) of OMA at future meetings.

[REDACTED]
Ms. Kathleen Elliott
February 14, 2019
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 14, 2019

Via electronic mail

Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: OMA Request for Review – 2019 PAC 56598

Dear Mr. Allen:

On January 25, 2019, you submitted the above-captioned Request for Review alleging a violation of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Algonquin Township Board (Board) in connection with its January 25, 2019, special meeting. This office's review of the information furnished, however, provides no basis for this office to conclude that the Board violated OMA.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires, in pertinent part, that a public body provide "[p]ublic notice of any special meeting * * * at least 48 hours before such meeting, which notice shall also include the agenda for the special * * * meeting." Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) further provides that "a public body that has a website **that the full-time staff of the public body maintains** shall post notice on its website of all meetings of the governing body of the public body." (Emphasis added.)

Your Request for Review alleged that the Board violated OMA by failing to post the agenda and notice for its January 25, 2019, special meeting on the Board's website. The plain language of section 2.02(b) of OMA requires a public body to post a copy of the agenda of a special meeting on its website 48 hours before the meeting, **if its full-time staff maintains the website**. In a February 6, 2019, telephone conversation with a representative of the Township, the Township confirmed that its website is now maintained by a third-party entity. Furthermore, in a February 11, 2019, e-mail to a Supervising Attorney in the Public Access Bureau, the Township's attorney specified that the website is maintained by IT Connections Inc. of Crystal Lake, Illinois. Because your submission does not provide any evidence that the Board's website is maintained by the full-time staff of the Township, it does not provide facts from which this

Mr. Kirk Allen
February 14, 2019
Page 2

office could conclude that the Board violated section 2.02 of OMA by not posting the January 25, 2018, meeting agenda on its website. See 5 ILCS 120/3.5(a) (West 2016) (requiring a Request for Review to provide a summary of facts supporting the alleged OMA violation).

Accordingly, this office has determined that no further action is warranted in this matter. This file is closed. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address on the first page of this letter.

Very truly yours,



CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

56598 o unf mun

cc: *Via electronic mail*
The Honorable Karen Lukasik
Clerk, Algonquin Township
3702 U.S. Highway 14
Crystal Lake, Illinois 60014
klukasik@algonquintownship.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 15, 2019

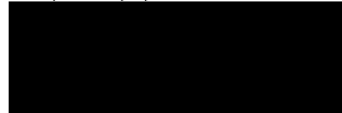
Via electronic mail
The Honorable Michael Manzo
Trustee, Board of Trustees
Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 60523
mmanzo@oak-brook.org

RE: OMA Request for Review – 2012 PAC 23912

Dear Mr. Manzo:

In a February 14, 2019, telephone conversation with an Assistant Attorney General in the Public Access Bureau, you expressed that you no longer wish to pursue the above-captioned Request for Review concerning an alleged Open Meetings Act (OMA) violation by the Village of Oak Brook Board of Trustees related to its December 11, 2012, closed session meeting minutes. Accordingly, this file is closed. If you have any questions, please contact me at the Chicago address below.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

23912 o wdrawn mun

The Honorable Michael Manzo
February 15, 2019
Page 2

cc: *Via electronic mail*
The Honorable Gopal G. Lalimalani, MD, MBA
President, Board of Trustees
Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 60523
glalimalani@oak-brook.org

Via electronic mail
Mr. Peter M. Friedman
Attorney for Village of Oak Brook
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
peter.friedman@hklaw.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 15, 2019

Via electronic mail
Mr. Steven E. Glink
3338 Commercial Avenue
Northbrook, Illinois 60062
steve@educationrights.com

Via electronic mail
Mr. Brian P. Crowley
Franczek Radelet
300 South Wacker Drive
Suite 3400
Chicago, Illinois 60606
bpc@franczek.com

RE: OMA Request for Review – 2015 PAC 39696

Dear Mr. Glink and Mr. Crowley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On January 20, 2016, Mr. Steven E. Glink submitted a Request for Review alleging that the Board of Education (Board) of Itasca School District 10 (District) violated OMA on January 6, 2016, by meeting "in secret" with the Superintendent of the District to discuss the disciplinary action of a student, and without providing notice of such a meeting.¹ On February 11, 2016, Mr. Brian P. Crowley, counsel for the Board, submitted a written response to this office on the Board's behalf, asserting that on January 6, 2016, the Superintendent discussed a student disciplinary matter with one Board member, Ms. Drew-Shaw. The Board also

¹Letter from Steven E. Glink to Sarah Pratt, Public Access Counselor, Office of the Attorney General (January 20, 2016). To the extent that the Request for Review could be construed to allege that Board violated a student's constitutional rights, those allegations are not subject to review by the Public Access Counselor. See 15 ILCS 205/7(c)(3) (West 2016) (the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 et seq. (West 2016))).

Mr. Steven E. Glink
Mr. Brian P. Crowley
February 15, 2019
Page 2


provided this office an affidavit of Ms. Drew-Shaw, who averred that on January 6, 2016, she discussed a student disciplinary matter with the Superintendent, and that no other Board members were present during this discussion. In his reply, Mr. Glink asserted that Board member Shaw and her husband told his clients that the full Board attended the gathering.

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016)) provides that "[a]ll *meetings* of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." (Emphasis added.) In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)):

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

The allegation that the Board held an improper meeting on January 6, 2016, to discuss the discipline of a student appears to be based solely on alleged statements that Mr. Glink's clients attributed to a Board member and her spouse. That Board member provided an affidavit that expressly denies such an improper meeting occurred. Accordingly, this office is unable to conclude from the available information that the Board held an improper "meeting" on January 6, 2016, which was subject to the requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.


EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 15, 2019

Via electronic mail

Via electronic mail

Mr. Steven M. Richart, Attorney
Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
srichart@hlerk.com

RE: OMA Request for Review – 2016 PAC 42921

Dear [REDACTED] and Mr. Richart:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On July 13, 2016, [REDACTED] submitted a Request for Review alleging that Woodstock Community Unit School District 200 (District) violated OMA in connection with its June 21, 2016, meeting. As background, she stated that on May 24, 2016, the District's Board of Education (Board) had approved a \$2.8 million inter-fund transfer, and had announced a meeting to be held on June 21, 2016. She alleged:

On afternoon of 6-20-16, at Clay Academy building where public meeting was to be held the next evening, I did not observe an agenda or other notice posted describing inter-fund transfer public meeting.

On day of meeting, 6-21-16, I did observe posted agenda^e on several doors at Clay Academy.^[1]

¹E-mail from [REDACTED] to Leah Bartelt, Public Access Counsel, AG Illinois (July 13, 2016).

[REDACTED]
Mr. Steven M. Richart
February 15, 2019
Page 2

She further stated that the Board voted to pass the inter-fund transfer during the meeting, and alleged that the Board had not met the requirements of section 17-2A of the School Code (105 ILCS 5/17-2A (West 2016)).

On August 12, 2016, this office sent a copy of the Request for Review to the District and asked it to provide a written explanation as to whether it had properly posted notice of the June 21, 2016, Board meeting. On August 22, 2016, outside counsel for the District provided a written response, together with the agenda for the June 21, 2016, meeting, the minutes of the meeting, and affidavits from relevant personnel. Mistakenly, it appears that the District's response may not have been forwarded to [REDACTED] until January 4, 2019. She did not submit a reply.

ANALYSIS

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

As an initial matter, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Because [REDACTED] allegations concerning section 17-2A of the School Code do not provide a factual basis for a violation of OMA and do not involve a FOIA denial, they are not subject to review by this office.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in relevant part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Additionally, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides, in relevant part:

Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be

the subject of final action at the meeting. The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting.

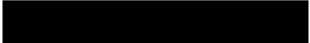
In the District's response to this office, the District's counsel first noted: [REDACTED] does not appear to allege any facts that indicate that the Board failed to post an agenda for the June 21, 2016, meeting; rather she seems to allege that the Board did not post notice specifically for the interfund transfer."² Indeed, although it was somewhat unclear, [REDACTED] Request for Review appears to have alleged that the District did not provide notice of the inter-fund transfer, rather than notice of the June 21, 2016, Board meeting in general. OMA does not set forth specific requirements for notice of a meeting in which a board of education votes on an inter-fund transfer; rather, a public body that intends to vote on an inter-fund transfer resolution during a meeting simply must set forth the general subject matter of that resolution on the agenda pursuant to section 2.02(c) of OMA. This office's review of the agenda confirmed that it contained the item: "Approval of a Resolution Authorizing an Interfund Transfer."³ In a separate Request for Review filed by [REDACTED] concerning the same meeting (2016 PAC 42604), this office determined that this item set forth the general subject matter of the inter-fund transfer resolution. Ill. Att'y Gen. PAC Req. Rev. Ltr. 42604, issued July 7, 2016, at 2.

Furthermore, the District's counsel confirmed, via affidavits from the District's executive assistant for the superintendent and its communications specialist, that the District posted notice of the meeting more than 48 hours in advance at its principal office and on its website. The executive assistant also stated in her affidavit that on June 16, 2016, she sent the agenda to the secretary at the Clay Professional Development Center who was responsible for posting it at that location. In 2016 PAC 42604, [REDACTED] stated: "It is unclear whether an agenda was posted on June 20th at the building where the noticed June 21st meeting was to be held."⁴ Still, it is undisputed that at least one copy of the agenda was continuously posted for the requisite time period at least 48 hours before the meeting commenced as required by section

²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP, to Benjamin Reed, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 22, 2016), at 1.

³Woodstock Community Unit School District 200 Board of Education, Agenda Item IX(1), Approval of a Resolution Authorizing an Interfund Transfer (June 21, 2016).


⁴Attachment to e-mail from [REDACTED] to Public Access [Bureau] (June 24, 2016).


Mr. Steven M. Richart
February 15, 2019
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2.02(c) of OMA. Under these circumstances, this office is unable to conclude from the available information that the District failed to provide proper notice of its June 21, 2016, meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-8413. This letter serves to close this matter.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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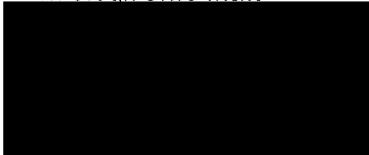


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 15, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56709

Dear [REDACTED]

On February 5, 2019, the Public Access Bureau received your Request for Review in which you allege that the Pleasant Plains Community Unit School District No. 8 (District) Board of Education (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by approving an intergovernmental agreement (agreement) outside of an open meeting.

Specifically, you allege that the Board listed the approval of the agreement on the agenda for its June 25, 2018, regular meeting, and you have obtained a copy of the June 25, 2018, executed agreement (date-stamped June 28, 2018), but the minutes of the June 25, 2018, Board meeting do not include any reference to the agreement. Therefore, you contend that the Board must have taken final action outside of an open meeting to approve the agreement. You have asked this office to review the verbatim recordings of the Board's May 21, 2018, closed session, during which the agreement was discussed, and the Board's June 25, 2018, closed session. You also requested a review of the verbatim recordings of those closed sessions "for full transparency over any matter that exceeded cited exception during these executive sessions[.]"¹

As a threshold matter, this office notes that the minutes of the Board's June 25, 2018, regular meeting as posted to its website include the following:

¹E-mail from [REDACTED] to Laura Harter (February 5, 2019), at 4.

February 15, 2019

Page 2

President Humphrey made the motion to approve the Intergovernmental Agreement with the Village of Pleasant Plains. Mrs. Keys seconded the motion and roll was called.

Yea: Reiser-Weiters, Cowan, Keyes, Jachino, Nestler and President Humphrey
Nay: None
Absent: Handy

Motion carried 6-0-0^[2]

A statement printed at the top of the first page of the minutes explains that a previous copy of the June 25, 2018, meeting minutes posted to the website was incomplete, as "[t]he backside pages of a two sided copy were not scanned."³ Indeed, the copy of the June 25, 2018, minutes that you provided to this office appears to be missing pages. Based on the available information, the June 25, 2018, meeting minutes posted on the Board's website do reflect a vote taken on the agreement.

This office is precluded from making any determination regarding your allegations, however, because you did not submit your Request for Review before the statutory period for doing so expired. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

²Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, June 25, 2018, Minutes 2, *available at* <https://v3.boardbook.org/Public/PublicItemDownload.aspx?mk=50291333&fn=minutes.pdf> (last visited February 14, 2019).

³Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, June 25, 2018, Minutes 1, *available at* <https://v3.boardbook.org/Public/PublicItemDownload.aspx?mk=50291333&fn=minutes.pdf> (last visited February 14, 2019).

February 15, 2019

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The claims in your Request for Review concern an action that allegedly should have been included in the Board's meeting minutes more than 60 days before you filed your Request for Review. Although your Request for Review included copies of responses to Freedom of Information Act (FOIA) requests you received in January 2019, you have not asserted that despite using reasonable diligence, you did not discover the alleged violation within 60 days of its occurrence. Further, it appears that a person using reasonable diligence would have discovered within 60 days that the agreement item that appeared on the agenda for the June 25, 2018, meeting was not included in the June 25, 2018, meeting minutes, as those minutes were approved at the July 23, 2018, Board meeting⁴ and were required to have been available to the public within ten days of that approval. 5 ILCS 120/2.06(b) (West 2016). Likewise, a person using reasonable diligence would have recognized that the June 25, 2018, minutes initially posted to the Board's website were incorrect, as many agenda items were missing and the information regarding the Board's votes that carried over between pages appeared to be repetitive. Further, the executive session minutes you recently obtained pursuant to a FOIA request were not necessary to discover the omission of the approval of the agreement on the June 25, 2018, meeting minutes.

You have also requested that this office review the verbatim recordings of the Board's May 21, 2018, and June 25, 2018, closed sessions for any matter that exceeded the cited exceptions authorizing the closed sessions. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[,]" and that the submission "must include a summary of the facts supporting the allegation." Aside from the information regarding the approval of the agreement addressed above, you have not provided this office with any facts to suggest that the Board's discussions in those closed sessions exceeded the scope of the cited exceptions. Moreover, you have not asserted that despite using reasonable diligence, you did not discover the alleged violations within 60 days of their occurrence.

You also state that the agreement includes "only two BOE member signatures (not a quorum) and the signature of the Mayor of Plains who there is no indication in the meeting minutes to suggest he was even at the June 25, 2018 BOE meeting." This office's authority is limited to resolving alleged violations of OMA and FOIA (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). This office does not have authority to address which representatives from a public body may sign agreements on behalf of the public body.


⁴Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, July 23, 2018, Minutes 1, available at <https://v3.boardbook.org/Public/PublicItemDownload.aspx?mk=50294797&fn=minutes.pdf> (last visited February 14, 2019).


February 15, 2019

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Accordingly, this office will take no further action in this matter, and this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or at (217) 524-7958.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Gregg Humphrey
President
Pleasant Plains Community Unit School District No. 8
Board of Education
315 West Church
Pleasant Plains, Illinois 62677
ghumphrey@ppcusd8.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 15, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56777


Dear 

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

On February 8, 2019, you submitted a Request for Review alleging that the Mayor of the City of Waukegan, the Honorable Sam Cunningham, violated OMA in connection with several City Council meetings; February 4, 2019, is the only meeting date you specifically identified. In general terms, you referenced the right to address public officials pursuant to section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)),¹ and certain types of speech that, according to you, are not protected by the first amendment to the United States Constitution. You did not, however, set forth facts with respect to how Mayor Cunningham or the rest of the City Council allegedly violated OMA. For instance, you did not describe any particular instances in which Mayor Cunningham or the City Council improperly restricted public comment by a member of the public. Although you stated that you had attached a detailed listing of each incident and violation, your e-mail included no such attachment. This office notified you of that fact by e-mail on February 11, 2019, but has not heard back.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.]

¹Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."


February 15, 2019


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* * * The request for review * * * must include a **summary of the facts supporting the allegation.**" (Emphasis added.)

Because your Request for Review did not provide a factual basis from which this office could conclude that Mayor Cunningham or the City Council violated OMA, the Public Access Bureau has determined that no further action is warranted in this matter.

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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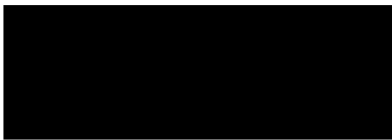
cc: *Via electronic mail*
The Honorable Sam Cunningham
Mayor
City of Waukegan
100 North Martin Luther King Jr. Avenue
Waukegan, Illinois 60085
mayor.cunningham@waukeganil.gov



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 19, 2019



Mr. Jeffrey R. Jurgens
Corporation Counsel
City of Bloomington
109 East Olive Street
Bloomington, Illinois 61702

RE: OMA Request for Review – 2012 PAC 21940

Dear [REDACTED] and Ms. Dodson:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the City of Bloomington City Council (Council) did not violate OMA by holding improper meetings or taking final action via e-mail on September 20, 2012, and October 17, 2012. Although significant time has passed since this OMA dispute arose, this letter is issued to provide guidance concerning private communications involving members of a public body.

On October 24, 2012, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Council violated OMA by voting on two items via e-mail in September and October 2012. In response to a request from this office, counsel for the public body submitted a detailed answer to the allegations in the Request for Review, along with copies of the e-mails at issue. [REDACTED] replied to the Council's written response.

[REDACTED] provided a copy of a September 20, 2012, e-mail from then-City manager David Hales¹ presenting three options for addressing an issue concerning a flag and requesting a response from Council members. In addition, [REDACTED] provided a copy of an

¹Mr. Hales no longer serves as city manager.

Mr. Jeffrey R. Jurgens
February 19, 2019
Page 2

October 17, 2012, e-mail from Mr. Hales presenting three options for addressing a budget issue and requesting a response from Council members. The Council's response to this office denied that the City manager, who is not a member of the Council, invited the Council to deliberate on these issues:

As previously mentioned, the emails at issue in this case were sent to the City Council and others by city Manager David Hales. With regard to both emails, Mr. Hales was merely conveying information and seeking input from the Council on how best to proceed. His email was not intended to open up a debate amongst the City Council members. He asked for their input/preference with regard to the three options he provided. That input to be provided back to him.^[2]

The Council's response further asserted that there was no contemporaneous interactive communication about public business among a majority of a quorum of members because the four Council members who responded to the City manager's e-mails responded directly to the City manager, not to the other members of the Council.

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) provides that "all meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 (5 ILCS 120/1.02 (West 2012)) defines a "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, **electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication**, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.
(Emphasis added.)

The Public Access Bureau has determined that "contemporaneous interactive communication" occurs when council members discuss public business in the same general time frame, but not

²Letter from Rosalee Dodson, Assistant Corporation Counsel, City of Bloomington, to Lindsay Lavine, Assistant Attorney General, Office of the Attorney General, Public Access Bureau (September 20, 2013), at 4.

necessarily simultaneously. *See, e.g.,* Ill. Att'y Gen. PAC Req. Rev. Ltr. 14722, issued August 12, 2011, at 4; Ill. Att'y Gen. PAC Req. Rev. Ltr. 18676, issued September 9, 2013, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 39667, issued February 18, 2016, at 3.

The Council is comprised of nine aldermen and the City's mayor. Thus, if four members, a majority of a quorum, of the Council engaged in contemporaneous, interactive, deliberative discussions of public business via e-mail, then the procedural safeguards and requirements of OMA would have applied.

With respect to the City manager's September 20, 2012, e-mail, four members of the Council responded between September 20, 2012, and September 25, 2012. Their responses were either directly to other members of the Council or copied to other members of the Council. However, all four responses were separated too far in time to constitute "contemporaneous" interactive communications. Similarly, four members of the Council responded to the City manager's October 17, 2012, e-mail between October 17, 2012, and October 23, 2012. Those responses, however, were sent directly to the City manager and were not copied to other members of the Council. Such communications did not involve a majority of a quorum of the Council and also were separated too far in time to be contemporaneous. Further, although the e-mails express a minority of the Council members' opinions and/or preferences, those expressions do not reflect final actions by the Council concerning the issues raised by the City manager. Accordingly, this office concludes that the e-mails at issue did not constitute meetings of the Council or final actions by the Council in violation of OMA.

Although this office recognizes that it is sometimes necessary for members of a public body to communicate with one another between meetings, e-mails concerning public business which are sent to or received by a majority of a quorum skirt the purpose of OMA,³ and have the potential to violate OMA. We therefore caution the members of the Council to be mindful of the requirements of OMA, as well as the public policy favoring the open discussion of matters affecting the public interest, before engaging in such e-mail communications.

³Section 1 of OMA (5 ILCS 120/1 (West 2014)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."



Mr. Jeffrey R. Jurgens

February 19, 2019

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,


S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 19, 2019

Via electronic mail
Mr. John Kraft

[REDACTED]
john@illinoisleaks.com

Via electronic mail
Mr. Steven M. Richart
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
OBO Jasper County Community Unit School District No. 1
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
srichart@hlerk.com

RE: OMA Request for Review – 2018 PAC 52345

Dear Mr. Kraft and Mr. Richart:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Jasper County Community Unit School District No. 1 (District) did not violate the requirements of OMA in connection with certain closed session verbatim recordings, as alleged by Mr. John Kraft.

On March 23, 2018, Mr. Kraft submitted this Request for Review alleging that on March 14, 2018, the Board violated section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)) by failing to provide a Board member with access to certain closed session verbatim recordings. Mr. Kraft further alleged that the Board: (1) failed to maintain closed session verbatim recordings at its main office or its official storage location, (2) copied or otherwise removed closed session verbatim recordings without a majority vote or court order, and (3) allowed unsupervised access to closed session verbatim recordings to the District's information technology (IT) employee, attorney, and superintendent.

Mr. John Kraft
Mr. Steven M. Richart
February 19, 2019
Page 2

On March 29, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide a written answer to Mr. Kraft's allegations. In particular, this office asked the Board to address whether one of its members requested access to closed session verbatim recordings and whether the Board provided access in accordance with section 2.06(e) of OMA. This office also asked whether the Board has maintained the closed session verbatim recordings in accordance with section 2.06(e) of OMA, and to provide this office with any written policies or procedures for the maintenance and handling of its closed session verbatim recordings.

On April 10, 2018, the Board submitted both a complete version of its written answer and a partially redacted version for this office to forward to Mr. Kraft;¹ the Board also furnished an affidavit from its Records Secretary, Ms. Janet Benefeil, for this office's confidential review. On April 11, 2018, this office forwarded a copy of the redacted answer to Mr. Kraft. On April 12, 2018, Mr. Kraft submitted a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

As a preliminary matter, the Board's response asserts that "Mr. Kraft does not have standing to bring this Request for Review because he is not the aggrieved party."² Unlike the requirements for Public Access Counselor review under the Freedom of Information Act (FOIA), which provides in section 9.5(a) (5 ILCS 140/9.5(a) (West 2016)) that "[a] person whose request to inspect or copy a public records is denied" may file a request for review, OMA provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" Thus, Mr. Kraft does have "standing" to bring this complaint and this office has the authority to review his allegations.

Section 2.06(e) of OMA provides, in pertinent part:

¹Section 3.5(c) of OMA (5 ILCS 120/3.5(c) (West 2016)) provides that "[u]pon request, the public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue."

²Letter from Steven M. Richart, Hodges Loizzi Eisenhammer Rodick & Kohn LLP, to Neil Neil Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney general, (April 10, 2018) at 1.

Mr. John Kraft
Mr. Steven M. Richart
February 19, 2019
Page 3

Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. * * * *Access to verbatim recordings shall be provided to duly elected officials or appointed officials filling a vacancy of an elected office in a public body, and access shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the public body or by court order.* (Emphasis added.)

The General Assembly added the language emphasized above to section 2.06(e) of OMA by enacting Public Act 99-515, effective June 30, 2016. The House sponsor of the bill, Representative Jeanne Ives, described the purpose of the legislation as follows:

Ives: This is a very simple Bill. It passed out of committee unanimously. It essentially says that if you're a newly elected official, you * * * have access to closed session meetings of all the previous boards. Remarks of Rep. Ives, April 14, 2016, House Debate on House Bill No. 4630, at 103.

The Senate debate on House Bill 4630 further illustrates the intent of the legislation:

Senator M. Murphy: * * * Does the bill change the confidentiality and purpose of verbatim recordings?

* * *

Senator Connelly: No, it does not, Senator Murphy. It doesn't change the Act's intent for confidentiality. It does, however, add an additional purpose for which the verbatim recording may be used. Current law provides that the Attorney General Public Access Counselor and/or a court of law are able to examine whether a violation of [OMA] has occurred when one is alleged.

And with – with enacting this legislation, duly elected officials may review those verbatim recordings as well. Remarks of Sen. Murphy and Sen. Connelly, May 26, 2016, Senate Debate on House Bill No. 4630, at 81.

Board Member's Access to Closed Session Verbatim Recordings

In the non-confidential version of its answer, the Board explained that one of its members, Mr. Jed Earnest, had recently made several requests to listen to various closed session verbatim recordings. According to the Board, "Mr. Earnest was informed that he may listen to the recordings. All that he needs to do is schedule a time to meet with the Superintendent in the District's main office so the recordings can be ready and they can listen to the recordings together pursuant to Section 2.06(e)." The Board further described its handling of Mr. Earnest's requests as follows:

After making his first request, Mr. Earnest listened to the requested recording in accordance with section 2.06(e). On March 14, 2018, Mr. Earnest went to the District office to listen to the September 22, 2016, closed session recording, as was previously scheduled between him and the Superintendent. On that same day, he requested to also listen to the August 2016 closed session recording. Superintendent Johnson was not able to listen to the recordings with Mr. Earnest due to scheduling conflicts and the recordings not being ready. Accordingly, Superintendent Johnson asked Mr. Earnest to make an appointment to come back to the District office to listen to the August 2016 recording. Superintendent Johnson is in the process of scheduling times with Mr. Earnest for when he may come to the office to listen to this recording and the other requested recordings.^[3]

Mr. Kraft replied:

In a text message about the August 26, 2016 closed session recording, on March 14, 2018 at approximately 2:25 p.m., from Mr. Johnson to Mr. Earn[e]st, Mr. Johnson stated that "*I will have Aaron pull it and I will send it to our attorneys for them to review*

³Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Neil Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (April 10, 2018), at 2.

Mr. John Kraft
Mr. Steven M. Richart
February 19, 2019
Page 5

once that is completed I can work with you on a time to listen to it with me." (Emphasis in original.)^[4]

Mr. Kraft additionally argued: "Nothing in the statute authorizes anyone * * * to force a board member to be at the whim of a board's attorney or at the whim of the employee of the board, before said board member can listen to the recordings."⁵

The Board's response to this office confirmed that Mr. Earnest accessed a requested closed session verbatim recording during a scheduled appointment with Superintendent Johnson. In addition, the Board asserted that, at the time of its response to this office, Mr. Earnest and Superintendent Johnson were in the process of scheduling a second appointment to access a separate referenced recording. The plain language of section 2.06(e) does not address the specific timing of access by a Board member, but, contrary to Mr. Kraft's argument, does provide that access shall be granted in the presence of an administrative official of the public body or certain other personnel. Thus, section 2.06(e) necessarily contemplates that a closed session verbatim recording may not be immediately available to a Board member, as arrangements must be made for appropriate oversight. This office has not received any evidence that Mr. Earnest was denied the opportunity to access any closed session verbatim recordings within the meaning of section 2.06(e), whether through outright refusal or a delay so unreasonable that it effectively constituted a denial. Therefore, this office concludes that the Board did not violate section 2.06(e) of OMA with respect to Mr. Earnest's access to closed session verbatim recordings on or around March 24, 2018.

Copying, Removing, or Allowing Unsupervised Access to Closed Session Verbatim Recordings

In response to Mr. Kraft's allegations concerning the extent to which the Board maintains the confidentiality and file integrity of its closed session verbatim recordings, the Board asserted that it "properly stores the closed session recordings[.]" and provided this office with confidential information in that regard.⁶ The Board also asserted: "Section 2.06(e) only addresses the right of Access for the public and board members; access by a public body's employees and attorneys is not addressed by Section 2.06(e)."⁷ Mr. Kraft replied that, based on

⁴E-mail from John Kraft to [Public Access Bureau] (April 12, 2018). Mr. Kraft did not provide this office with a copy of the e-mail that he referenced.

⁵E-mail from John Kraft to [Public Access Bureau] (April 12, 2018).

⁶Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Neil Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (April 10, 2018), at 2.

⁷Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Neil Olson, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (April 10, 2018), at 2.

Mr. John Kraft
Mr. Steven M. Richart
February 19, 2019
Page 6

the text message referenced above, "at least one copy [of the closed session verbatim recording Mr. Earnest asked to review on March 14, 2018,] was made, without appropriate authority, and delivered to the district's attorney. Nothing in the statute authorizes copies to be [made] or for the board attorney to review any closed session recordings without a majority board vote or a Court Order."⁸ Mr. Kraft alleged that the text message shows both that the recording was improperly removed from the Board's official storage location and that an IT employee, the District's attorney, and the District's superintendent had unauthorized access to it.

In construing a statutory provision such as section 2.06(e) of OMA, the primary goal is to ascertain and give effect to the intent of the General Assembly. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶16, 965 N.E.2d 1103, 1106 (2012). Legislative intent is best evidenced by the language used in the statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). "On the other hand, when statutory language is susceptible to more than one reasonable interpretation, it is appropriate to resort to other aids of construction to determine legislative intent." *Veterans Assistance Comm'n of Grundy County v. Count Board of Grundy County*, 2016 IL App (3d) 130969, ¶45, 50 N.E.3d 121, 129 (2016). "We view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Gutman*, 2011 IL 110338, ¶12, 959 N.E.2d 621, 624 (2011). A reviewing body "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results." *People v. Hunter*, 2013 IL 114100, ¶13, 986 N.E.2d 1185, 1189 (2013).

The plain language of the opening sentence of section 2.06(e) of OMA makes clear that the provision prohibits *public* inspection of a closed session verbatim recording that a public body has not elected to disclose. Thus, on its face, section 2.06(e) of OMA does not restrict limited access by appropriate school personnel to facilitate a board member's request. As noted above, the plain language of section 2.06(e) also expressly allows a records secretary, an administrative official of the public body, or any elected official of the public body to listen to the closed session verbatim recording with the board member who has requested access, further signaling that section 2.06(e) of OMA is not aimed at prohibiting disclosure to appropriate school personnel involved in facilitating access to a recording. Moreover, even if the language of section 2.06(e) could be construed as restricting access of school personnel to closed session recordings, the legislative history set out above demonstrates that the intent of Public Act 99-515 was to ensure that newly elected or appointed members of public bodies have access to past closed session verbatim recordings and minutes, rather than to prevent an IT employee from

⁸E-mail from John Kraft to [Public Access Bureau] (April 12, 2018).

Mr. John Kraft
Mr. Steven M. Richart
February 19, 2019
Page 7

facilitating a board member's review. Construing the enacted provision as a whole, it is also more reasonable to infer that the prohibition on recording or removing closed session verbatim recordings was intended to apply to elected or appointed officials who have the statutory right to access them, rather than to infer that the General Assembly's intent was to prohibit a public body from providing a closed session verbatim recording to its attorney for the purpose of securing legal advice. Therefore, Mr. Kraft's allegations that the Board violated OMA by allegedly copying the recording for a District attorney and by allowing access to an IT employee and the District's superintendent are unavailing.

With respect to Mr. Kraft's allegation that the Board improperly removed one or more closed session verbatim recordings from the District's main office or official storage location, the Board's confidential affidavit set forth information sufficient to demonstrate that the Board did not violate the requirements of section 2.06(e) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 785-7438 or at cboggs@atg.state.il.us.

Very truly yours,



CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 19, 2019

Via electronic mail
Ms. Vickie Williams
Riverdale Residents Council
[REDACTED]

Via electronic mail
Mr. William Burford, President
Board of Trustees
Riverdale Public Library District
208 West 144th Street
Riverdale, Illinois 60827-2733
rdpl2@earthlink.net

RE: OMA Request for Review – 2018 PAC 56228

Dear Ms. Williams and Mr. Burford:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Riverdale Public Library District Board of Trustees (Board) did not violate the requirements of OMA when it allowed Trustee Maurice Roberts to attend its November 1, 2018, meeting by telephone.

On December 24, 2018, the Public Access Bureau received a Request for Review from Ms. Vickie Williams alleging that the Board had violated OMA when it permitted Trustee Roberts to attend the November 1, 2018, meeting when there was not a quorum of the Board physically present at the location of the meeting.

Ms. Williams' Request for Review also contained an allegation that the Board violated OMA at its October 22, 2018, meeting that she attended. Because section 3.5(a) of

Ms. Vickie Williams
Mr. William Burford
February 19, 2019
Page 2

OMA¹ (5 ILCS 120/3.5(a) (West 2016)) permits a person to file a Request for Review within 60 days of the date of the violation, unless facts concerning the violation are not discovered within the 60-day period, and because Ms. Williams did not file her Request for Review until 63 days after the date of the violation, this office does not have authority to review her allegations concerning the October 22, 2018, meeting.

On December 31, 2018, the Public Access Bureau sent a copy of the Request for Review to the Board and asked it to respond to Ms. Williams' allegation that the Board improperly allowed Trustee Roberts to attend its November 1, 2018, meeting when a quorum of the Board was not physically present. This office also requested that the Board identify the particular reason that Trustee Roberts was prevented from physically attending the meeting. In addition, this office requested that the Board provide a copy of the agenda and minutes of the meeting for our review. On January 9, 2019, the Board provided this office with a written answer along with copies of the agenda and minutes of the November 1, 2018, meeting. On January 10, 2019, this office sent Ms. Williams a copy of the Board's answer; she did not reply.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Ms. Williams' Request for Review asserted that the Board violated section 2.01 of OMA (5 ILCS 120/2.01 (West 2017 Supp.)) by not having a quorum of members physically

¹Section 3.5(a) of OMA provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly.

present at the location of the November 1, 2018, meeting. Section 2.01 of OMA provides, in pertinent part, "[a] quorum of members of a public body must be physically present at the location of an open meeting." The Public Access Bureau has concluded that "in the context of section 2.01 and the statute as a whole, the requirement that a quorum be physically present is tied to circumstances in which one or members participate in the meeting despite not being physically present at the meeting location." Ill. Att'y Gen. PAC Req. Rev. Ltr. 48860 49185, issued December 7, 2017, at 4. Accordingly, because Trustee Roberts participated in the meeting despite not being physically present, this office will review whether the Board had a quorum physically present at the meeting as required by section 7 of OMA (5 ILCS 120/7 (West 2017 Supp.)) and, if so, whether Trustee Roberts had a permissible reason for the Board to allow him to attend by other means.

Section 7 of OMA provides for the attendance of a member of a public body by means other than physical presence in limited circumstances:

(a) If a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

(b) If a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical.

(c) A majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section, may further limit the extent to which attendance by other means is allowed, and may provide for the giving of additional notice to the public or further facilitate public access to meetings. (Emphasis added.)

Under the plain language of these provisions, a public body with a quorum physically present has the discretion to permit a member who is not physically present to participate in the meeting by audio or video conference for any of the three reasons set forth in section 7(a) of OMA and in accordance with its rules for attendance by other means.

In her Request for Review, Ms. Williams alleged that "[t]here were not enough board members physically present for a quorum. So the Library Director, contacted one of the Board Members, Maurice Roberts, who attended the meeting by phone."² In its response to this office, the Board asserted "the Special Board Meeting held on November 1, 2018 did have a quorum of 4 board members in attendance and 1 board member via telephone conference. * * * Vice-President Roberts could not attend the meeting due to 'employment purposes' reason under Section 7(a) of the Open Meetings Act[.]"³ The Board provided this office with the minutes of the November 1, 2018, meeting which state, in pertinent part:

ROLL CALL: President Burford, Present; Secretary Scott, Present;
Trustee Judy Wallace, Present; Trustee Givens, Present; Trustee
Cunningham, Absent; Trustee Roberts, Present via Conference
Call due to work (O'hare); Trustee Susan Avant-Holloway,
(Absent for 1 year)[.]⁴

The minutes indicate that four members of the Board were physically present at the meeting, one member was present by audio conference, and two members were absent from the meeting.

The Board also furnished this office with a copy of its by-laws concerning a quorum and remote attendance at a meeting by a member of the Board. The by-laws provide:

2.3.1.1 Quorum

A quorum at meetings of the full Board shall consist of four (4)
Board members.

* * *

2.3.1.3 Remote Attendance

It is the policy of the Riverdale Public Library District that any member of the Board may attend and participate in any open or closed meeting of the Board from a remote location via telephone, video or Internet connection, provided that such attendance and

²E-mail from Vickie Williams, Riverdale Residents Council, to Public Access, Office of the Attorney General (December 24, 2018).

³Letter from William Burford, President of the Board of Trustees, Riverdale Public Library, to Matt Hartman, Assistant Attorney General, Public Access Bureau (January 9, 2019).

⁴Riverdale Public Library Board, Special Meeting, November 1, 2018, Minutes 1.

Ms. Vickie Williams
Mr. William Burford
February 19, 2019
Page 5

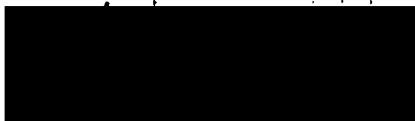
participation is in compliance with this policy and any other applicable laws.^[5]

According to the information in the by-laws and the minutes of the November 1, 2018, meeting, a quorum of the Board is four members and four members were present at the location of the meeting. Thus, this office concludes that a quorum of the Board was physically present at the November 1, 2018, meeting.

In addition, the Board provided this office with information concerning the reason Trustee Roberts was not physically present at the meeting. Trustee Roberts stated his employer "has 2 offices and [he has] been working from [the] O'Hare office which is quite a distance from Riverdale where [he] reside[s]. The hours of operations changed without notice therefore [he] was not able to be present at the last few meetings."⁶ Accordingly, Trustee Roberts was unable to attend the November 1, 2018, meeting due to his employment, which is a permissible reason for a public body to allow a member to participate by other means under section 7(a) of OMA (5 ILCS 120/7(a) (West 2017 Supp.)). Because a quorum of the Board was physically present at the location of the meeting and because Trustee Roberts was prevented from physically attending the meeting because of his employment, the Board did not violate section 7 of OMA when it permitted Trustee Roberts to attend the meeting by telephone conference.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the bottom of the first page of this letter.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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⁵Riverdale Public Library District Board of Trustees, By-laws, §§2.3.1.1, 2.3.1.3.

⁶E-mail from Maurice Roberts to Katrina Harris, Library Administrator, Riverdale Public Library District, (January 7).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 20, 2019

Via electronic mail
Mr. Jon Styf
Editor, *Northwest Herald*
7717 South Route 31
Crystal Lake, Illinois 60014
jstyf@shawmedia.com

RE: OMA Request for Review – 2019 PAC 56599

Dear Mr. Styf:

The Public Access Counselor has received your Request for Review concerning an alleged Open Meetings Act (OMA) violation by Algonquin Township in connection with its January 25, 2019, special meeting. In a February 19, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that this matter may now be closed. Accordingly, this letter serves to close this matter. If you have questions, please contact me at (217) 785-7438 or at the Springfield address below.

Very truly yours,

A black rectangular redaction box covers the signature of Christopher R. Boggs.

CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

56599 o inf r mun

cc: *Via electronic mail*
The Honorable Karen Lukasik
Clerk, Algonquin Township
3702 U.S. Highway 14
Crystal Lake, Illinois 60014
klukasik@algonquintownship.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 21, 2019

Via electronic mail



RE: OMA Request for Review – 2013 PAC 25491

Dear 

On August 1, 2013, the Public Access Bureau received your Request for Review under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the AC-PORTA Committee of Ten violated OMA. In a February 21, 2019, telephone conversation with an Assistant Attorney General in the Public Access Bureau, you acknowledged that this file can now be closed.

Accordingly, this letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,



LEO DRAWS
Assistant Attorney General
Public Access Bureau

25491 o wdrawn sd



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 21, 2019

Via electronic mail

Via electronic mail

The Honorable Curtis McCall, Jr.
Mayor
Village of Cahokia
103 Main Street
Cahokia, Illinois 62206
c/o fjackson@cahokiaillinois.org

RE: OMA Request for Review – 2015 PAC 37389

Dear [REDACTED] and Mr. McCall:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On September 10, 2015, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that Mayor Curtis McCall, Jr., and four trustees on the Village of Cahokia (Village) Board of Trustees (Board) had failed to complete the OMA electronic training curriculum as required by the statute. She also alleged that the village clerk and deputy village clerk had failed to complete the same curriculum. On September 23, 2015, this office sent a copy of the Request for Review to the Village and asked it to respond to [REDACTED] allegations, but this office has no record of receiving a response from the Village.

Under section 1.05(b) of OMA (5 ILCS 120/1.05(b) (West 2016)), all the members of a public body must complete the approximately hour-long electronic training curriculum developed by the Public Access Counselor. In this case, that means that Mayor McCall and the Village's trustees must each complete the electronic training curriculum. Section 1.05(b) of OMA provides:

Except as otherwise provided in this Section, each elected or appointed member of a public body subject to this Act who becomes such a member after [January 1, 2012,] shall successfully complete the electronic training curriculum developed and administered by the Public Access Counselor. For these members, the training must be completed not later than the 90th day after the date the member:

- (1) takes the oath of office, if the member is required to take an oath of office to assume the person's duties as a member of the public body; or
- (2) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body.

Each member successfully completing the electronic training curriculum shall file a copy of the certificate of completion with the public body.

Completing the required training as a member of the public body satisfies the requirements of this Section with regard to the member's service on a committee or subcommittee of the public body and the member's ex officio service on any other public body.

* * *

An elected or appointed member of a public body subject to this Act who has successfully completed the training required under this subsection (b) and filed a copy of the certificate of completion with the public body is not required to subsequently complete the training required under this subsection (b).

Under the plain language of this provision, members of a public body generally need to complete the electronic training curriculum only once, rather than annually. However, section 1.05(a) of OMA (5 ILCS 120/1.05(a) (West 2016)) requires each public body to designate at least some personnel to take the OMA electronic training curriculum annually:

[REDACTED]
The Honorable Curtis McCall, Jr.

February 21, 2019

Page 3

Every public body shall designate employees, officers, or members to receive training on compliance with this Act. Each public body shall submit a list of designated employees, officers, or members to the Public Access Counselor. Within 6 months after [January 1, 2010,], the designated employees, officers, and members must successfully complete an electronic training curriculum, developed and administered by the Public Access Counselor, and thereafter must successfully complete an annual training program. Thereafter, whenever a public body designates an additional employee, officer, or member to receive this training, that person must successfully complete the electronic training curriculum within 30 days after that designation.

Thus, if the clerk and deputy clerk have been appointed OMA designees, they must complete the OMA electronic training curriculum annually. Otherwise, because they are not members of the Board, they are not required to complete the OMA electronic training curriculum at all.

It is undisputed that members of the Board, including Mayor McCall, had not completed the OMA electronic training curriculum as of the date of the submission of [REDACTED] Request for Review. This office requests that the Village promptly ensure that all members of the Board, including Mayor McCall, complete the OMA electronic training curriculum if they have not already done so. This office further advises the Village, if it has not already done so, to designate personnel to take the OMA electronic training curriculum annually, and to ensure that those individuals in fact complete the electronic training curriculum annually.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, jjones@atg.state.il.us, or the Chicago address on the first page of this letter.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 22, 2019

Via electronic mail

[REDACTED]

RE: OMA Request for Review – 2017 PAC 50336

Dear [REDACTED]

The Public Access Counselor has received your Request for Review concerning potential Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) violations by the Village of East Galesburg at a 2017 committee meeting. In a February 22, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that this matter may now be closed. Accordingly, this letter serves to close this matter.

If you have questions, please contact me at (217) 785-7438.

Very truly yours,

[REDACTED]

CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 25, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56677

Dear 

On February 22, 2019, via a phone conversation with an Assistant Attorney General in the Public Access Bureau, you indicated that you would like to withdraw your Request for Review concerning the possible violation of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) by the Mt. Vernon City Council. Accordingly, this file is closed.

If you have any questions, you may contact me by mail at the below Chicago address, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thank you.

Very truly yours,



SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

56677 f wdrawn mun

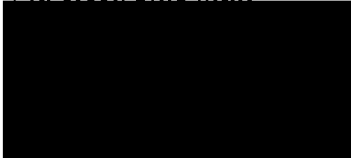


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 27, 2019

Via electronic mail



RE: OMA Request for Review – 2018 PAC 54822

Dear 

On September 11, 2018, the Public Access Bureau received your Request for Review under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Tolono Park District Board (Board) violated the notice requirements of section 2.02 of OMA (5 ILCS 120/2.02 (West 2016)) in connection with its September 10, 2018, meeting. In a February 22, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, Board President Matthew McCormick stated that the Board has since complied with the posting requirements of section 2.02 and will continue to do so. In a February 27, 2019, telephone conversation with an Assistant Attorney General in the Public Access Bureau, you acknowledged that this file can now be closed.

Accordingly, this letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,



LEO DRAWS
Assistant Attorney General
Public Access Bureau

54822 o inf r pkd

[REDACTED]

February 27, 2019

Page 2

cc: The Honorable Matthew McCormick
President, Tolono Park District Board
P.O. Box 228
Tolono, Illinois 61880



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 28, 2019

Via electronic mail

Via electronic mail

Mr. Shawn M. McLain
Attorney at Law
Guin Mundorf, LLC
310 Regency Centre
Collinsville, Illinois 62234
smclain@gmschoollaw.com

RE: OMA Request for Review – 2015 PAC 39117

Dear [REDACTED] and Mr. McLain:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)).

On December 15, 2015, this office received [REDACTED] Request for Review questioning whether the Board of Education (Board) of Harmony-Emge School District No. 175 discussed unauthorized topics in closed session on December 14, 2015. [REDACTED] acknowledged that the Board cited legally permissible reasons for entering closed session, but stated that she did not believe the Board limited its closed session discussion to those matters.

On December 31, 2015, this office forwarded a copy of the Request for Review to the Board asking for copies of the relevant meeting materials for this office's confidential review, together with a written response to [REDACTED] allegation. On January 11, 2016, the Board's attorney provided this office with those materials. On January 15, 2016, this office forwarded a copy of the Board's written explanation to [REDACTED]; she did not submit a reply.

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2014)) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2014)). The Board cited the following section 2(c) exceptions to enter closed session on December 14, 2015:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. * * *

(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

(3) The selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

* * *

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired. 5 ILCS 120/2(c)(1), (c)(2), (c)(3), (c)(5) (West 2014).

The section 2(c) exceptions "are to be strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2014).

In its response to this office, the Board asserted that it properly discussed during the December 14, 2015, closed session: the lease of real property for the use of the public body pursuant to section 2(c)(5), collective negotiating matters pursuant to section 2(c)(2), the selection of two persons to fill vacancies on the Board pursuant to section 2(c)(3), and the performance of two employees pursuant to section 2(c)(1). The Board stated that it "did not

[REDACTED]
Mr. Shawn M. McLain
February 28, 2019
Page 3

improperly discuss other open session subjects while in closed session."¹ The closed session minutes of the meeting indicate that the Board limited its discussion to the reasons it listed in its vote to close the meeting.² [REDACTED] did not provide any facts to the contrary. Under these circumstances, this office concludes that [REDACTED] allegation that the Board discussed topics other than those included in its vote to close its December 14, 2015, meeting is unfounded.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. Please contact this office at the Chicago address on the first page of this letter if you have any questions.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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¹Letter from Shawn M. McLain, Attorney at Law, Guin Mundorf LLC, to Benjamin Reed Assistant Attorney General, Office of the Attorney General (January 11, 2016), at 3.

²Harmony-Emge School District No. 175 Board of Education, Meeting, December 14, 2015, Closed Session Minutes 1.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 28, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 56995

Dear [REDACTED]

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in this matter.

On February 26, 2019, you submitted a Request for Review to the Public Access Bureau alleging that the President's Staff Committee (Staff Committee) of Northern Illinois University (University) violated OMA. Specifically, you alleged that you visited the University's website and did not see posted the dates of Staff Committee meetings, Staff Committee meeting agendas, Staff Committee meeting minutes, or the names of the Staff Committee's members. You argued that the Staff Committee is a subsidiary body, noting that it is defined in Article 18 of the University's bylaws.¹ You contended that the Staff Committee is subject to OMA to the same extent as the University's Resource, Space, and Budget Committee (RSB Committee), which this office determined to be an advisory body subject to OMA in Ill. Att'y Gen. PAC Req. Rev. Ltr. 50176, issued December 5, 2018.

Even if the Staff Committee is a public body subject to OMA,² it was not required to post on the University's website the information you were seeking. No provision of OMA

¹Northern Illinois University, Bylaws of Northern Illinois University, Article 18: Administrative Committees, https://www.niu.edu/u_council/constitution/bylaws/article18.shtml (last visited February 27, 2019).

²The available information suggests that the Staff Committee is distinguishable from the RSB Committee and other standing committees of the University Council. The Staff Committee appears to be intended to assist the president rather than to formally serve a public body. See *Pope v. Parkinson*, 48 Ill. App. 3d 797 (4th Dist. 1977) (committee appointed by university chancellor to advise chancellor and director of university's basketball arena on issues related to the arena was not subject to OMA because committee solely advised university administrators and served at pleasure of chancellor, rather than being accountable to any public body).

February 28, 2019

Page 2

requires a public body to post a list of its members online. Additionally, although section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[e]very public body shall give public notice of the schedule of regular meetings at the beginning of each calendar or fiscal year and shall state the regular dates, times, and places of such meetings[.]"³ section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) specifies:

[A] public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the **governing body** of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. (Emphasis added.)

Similarly, section 2.02(a) of OMA provides: "A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the **governing body** of that public body." (Emphasis added.) Thus, the requirement to post meeting notices and agendas online applies to the governing body of a public body rather than to subordinate bodies. Likewise, section 2.06(b) of OMA provides: "[A] public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its **governing body** open to the public on the public body's website within 10 days after the approval of the minutes by the public body." (Emphasis added.) Because the Staff Committee is not the University's governing body, it was not required to post meeting materials on the University's website even if it qualified as a public body subject to OMA. Accordingly, the Public Access Bureau has determined that no further action is warranted in this matter.

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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³Similarly, section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) provides: "[E]ach body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings."

February 28, 2019

Page 3

cc: *Via electronic mail*
Mr. Tom O'Grady
Assistant General Counsel
Office of General Counsel
Northern Illinois University
Altgeld Hall 330
Dekalb, Illinois 60115-2828
togrady1@niu.edu



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 1, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56894

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Village of Lincolnwood (Village) violated OMA.

Your Request for Review states that Sy Property 3701 LLC owns a piece of property located in Lincolnwood and that "no representative of Sy Property 3701 LLC has ever attended any Village meeting of Lincolnwood thereby allowing Sy Property 3701 LLC to act as a legal 'shell' company of the property's current occupant AT&T."¹ You then appear to allege that this constitutes a violation of OMA by the Village.

Among other things, OMA generally requires public bodies to conduct public business openly (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018), provide advance notice of meetings (5 ILCS 120/2.02 (West 2016)), and approve minutes of meetings (5 ILCS 120/2.06(b) (West 2016)). No provisions of OMA, however, require a representative of a private company to attend a meeting of a public body or obligate a public body to make findings about an entity's corporate identity. Because your Request for Review does not provide a summary of facts from which this office could conclude that any public body of the Village violated OMA, we have determined that no further action is warranted as to this matter. 5 ILCS 120/3.5(a) (West 2016) (requiring a person who submits a Request for Review to provide "a summary of the facts supporting the allegation.").

¹OMA – Request for Review by Public Access Counselor (PAC) form submitted by [REDACTED] (February 19, 2019).

[REDACTED]
March 1, 2019

Page 2

This file is closed. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

56894 o no fi war mun

cc: *Via electronic mail*
Ms. Anne Marie Gaura
Village Manager
Village of Lincolnwood
6900 North Lincoln Avenue
Lincolnwood, Illinois 60712
agaura@lwd.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 1, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56932

Dear [REDACTED]

The Public Access Bureau has received your Request for Review, pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (2016)), alleging that the United States Attorney's Office for the Northern District of Illinois violated OMA. For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

The requirements of OMA apply to each "public body." 5 ILCS 120/1 (West 2016). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "public body" as:

all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of **this State**, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. "Public body" includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. "Public body" includes the Health Facilities and Services Review Board. "Public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review

[REDACTED]
March 1, 2019

Page 2

Team Act, an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act, or the Illinois Independent Tax Tribunal. (Emphasis added.)

The plain language of this definition limits the application of OMA to entities of State and local governments in the State of Illinois. Under section 3.5(a) of OMA, the jurisdiction of the Public Access Counselor (PAC) is limited to reviewing alleged violations of OMA by such public bodies.

The United States Attorney's Office for the Northern District of Illinois part of the United States Department of Justice, which is an agency of the Federal government. Because the requirements of OMA do not apply to Federal government agencies, you have not provided any facts from which this office could conclude that a public body violated OMA. 5 ILCS 120/3.5(a) (West 2016) (requiring a person who submits a Request for Review to provide "a summary of the facts supporting the allegation."). Accordingly, this office has determined that no further action is warranted in this matter.

This file is closed. If you have questions, you may contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 5, 2019

Via electronic mail

The Honorable Miguel Rivera
Board Member
Board of Education
Waukegan Community Unit School District #60
1201 North Sheridan Road
Waukegan, Illinois 60085
Arecibo44@gmail.com

RE: OMA Request for Review – 2019 PAC 56890

Dear Mr. Rivera:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Waukegan Community Unit School District #60 Board of Education (School Board) violated OMA.

Your Request for Review alleges that the District's superintendent violated OMA in connection with the School Board's February 13, 2019, meeting by sending an "email of the meeting minutes [w]ith the malice intent to get me fire[d]." You provided a copy of an e-mail that the superintendent sent to the mayor of Waukegan and School Board members describing a discussion held during a portion of the meeting and referencing an attached copy of an audio recording of the discussion. In a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you clarified that you are alleging that the superintendent improperly disclosed meeting minutes prior to approval by the School Board by disseminating these materials.

Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides, in pertinent part: "A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The

¹E-mail from Miguel Rivera, Waukegan School Board Member, to Public Access Bureau-OPEN MEETINGS ACT, Office of the Attorney General (February 16, 2019).

Mr. Miguel Rivera
March 5, 2019
Page 2

minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. " However, the superintendent's e-mail and the audio recording of the meeting that she referenced in the e-mail are not "minutes" of the Board's February 13, 2019, meeting. No provision of OMA prohibits the superintendent from disseminating an audio recording of an open meeting or her recollection of what transpired during the meeting. Because your Request for Review does not provide a summary of facts from which this office could conclude that the superintendent or the School Board violated OMA, we have determined that no further action is warranted as to this matter. 5 ILCS 120/3.5(a) (West 2016) (requiring a person who submits a Request for Review to provide "a summary of the facts supporting the allegation.").

This file is closed. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
The Honorable R. Michael Rodriguez
President
Board of Education
Waukegan Community Unit School District #60
1201 North Sheridan Road
Waukegan, Illinois 60085
mrodriguez@wps60.org

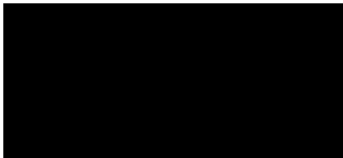


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 5, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56906

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On February 19, 2019, this office received your Request for Review alleging that the Village of Glenwood (Village) Board of Trustees (Board) violated the requirements of OMA in connection with a prospective development. Specifically, you provided this office with two sets of e-mails pertaining to a power plant project proposed by Advanced Power/Oak Meadow Energy (Advanced Power) and asked this office to investigate the Board's OMA compliance in connection with those communications. You referred this office to a specific portion in one of the sets of e-mails and contended that it "appears to show that individual meetings were conducted between the prospective developer and individual Trustees in September of 2018."¹ With regard to the other set of e-mails, you likewise referred this office to a specific section and contended that it "shows that the Advanced Power/Oak Meadow Energy attorney (Lenny Asaro) dictated code changes to the Village of Glenwood Attorney, John Donahue[.]"² You asserted that the Board had voted on the code changes at its November 20, 2018, meeting but alleged that it had made "no mention of the prospective development (Oak Meadow Energy/Advanced Power fossil fuel plant) that those changes would benefit[.]"³ You asked this office whether it was "legal or common practice for the developer[']s attorney to dictate code changes to a Village[.]"⁴

¹E-mail from [REDACTED] to Public Access [Bureau] (February 19, 2019).

²E-mail from [REDACTED] to Public Access [Bureau] (February 19, 2019).

³E-mail from [REDACTED] to Public Access [Bureau] (February 19, 2019).

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later than 60 days after the alleged violation**. If facts concerning the violation are not discovered within the 60-day period, but are **discovered at a later date**, not exceeding 2 years after the alleged violation, **by a person utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation**. (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation occurred unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. Additionally, a Request for Review of an alleged OMA violation must contain a factual summary sufficient to indicate that the public body potentially violated OMA.

In this matter, you have alleged that trustees improperly met with Advanced Power on an individual basis in September of 2018. The e-mails that you provided indicate that Advanced Power scheduled individual presentations with each of the trustees rather than holding a presentation at a Board meeting. You also appear to have alleged that the Board did not provide adequate public notice of the full motivations behind code changes approved at the Board's November 20, 2018, meeting. However, you submitted your Request for Review more than 60 days after the dates of the alleged September 2018 meetings and the Board's November 20, 2018, meeting, and you have not asserted or provided any facts indicating that you did not discover the alleged violations before the 60-day period after those events elapsed despite using reasonable diligence. Accordingly, it appears that your Request for Review is untimely.

Even if you had demonstrated that you had used reasonable diligence around the times of those September and November 2018 occurrences and had only discovered the alleged violations through responses to Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) requests received within 60 days before you submitted your Request for Review, OMA applies only to "gathering[s], * * *, or other means of contemporaneous interactive

⁴E-mail from [REDACTED] to Public Access [Bureau] (February 19, 2019).


March 5, 2019

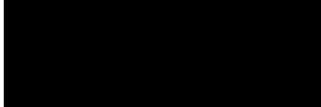
Page 3

communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]" 5 ILCS 120/1.02 (West 2016). Individual presentations or conversations between a third party, such as a developer, and a member of a public body generally would not qualify as "meetings" subject to OMA because they would not involve deliberations among a majority of a quorum of the members of the public body. Additionally, with respect to the information that the Board was required to publicly announce before voting on the code changes during its November 20, 2018, meeting, section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) provides: "Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." The minutes of the Board's November 20, 2018, meeting document that the "Glenwood Solar" project—the project proposed by Advanced Power—was directly and extensively discussed as the reason for the motions at issue.⁵

Further, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and FOIA. 15 ILCS 205/7(c)(3) (West 2016). OMA concerns the transparency with which public bodies meet and conduct business in relation to the public; it does not govern other aspects of the process for drafting amendments to an ordinance that occur outside of meetings or who may participate in that process. Because it appears that you did not submit your Request for Review before the statutory time period expired, and because the facts you have alleged do not indicate that the Board violated OMA, this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.


Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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⁵Village of Glenwood Board of Trustees, Meeting, November 20, 2018, Minutes 3-11.


March 5, 2019

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cc: *Via electronic mail*
The Honorable Ronald G. Gardiner
Mayor, Village of Glenwood
One Asselborn Way
Glenwood, Illinois 60425
rgardiner@villageofglenwood.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 6, 2019

Via electronic mail

Via electronic mail


Ms. Sisavanh Baker
Assistant State's Attorney
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, Illinois 60602
sisavanh.baker@cookcountyil.gov

RE: OMA Requests for Review – 2016 PAC 40757; 2016 PAC 43261

Dear [REDACTED] and Ms. Baker:

On March 14, 2016, and July 29, 2016, [REDACTED] submitted Requests for Review to this office alleging that the Cook County Healthcare Accessibility Task Force (Task Force) was a public body subject to the requirements of the Open Meetings Act (OMA) (5 ILCS 140/1 *et seq.* (West 2016)) and that it had violated the requirements of OMA in connection with various meetings held from February, 2016, through May, 2016. [REDACTED] alleged that the Task Force failed to adhere to the requirements of OMA and that it had not approved meeting minutes. The Cook County State's Attorney's Office (State's Attorney's Office) responded to those allegations on the Task Force's behalf and asserted that the Task Force was not a public body subject to the requirements of OMA. [REDACTED] submitted replies reiterating her contention that the Task Force was a public body and that it violated OMA.

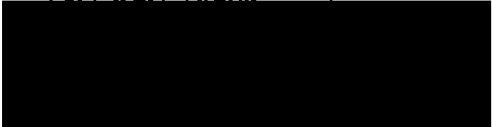
In a February 7, 2017, letter, the State's Attorney's Office notified this office that the Task Force had been disbanded since May 31, 2016. The State's Attorney's Office stated that the Task Force had disbanded without making any recommendations or taking any action, and that it had no intention of reconvening. This office has received no information to the contrary. Further, even if the Task Force had been a public body subject to OMA's requirements, because


Ms. Sisavanh Baker
March 6, 2019
Page 2

the Task Force ceased to operate as of May, 2016, no remedy would have been available. Accordingly, these matters are closed.

If you have any questions, please contact me at cboggs@atg.state.il.us or the Springfield address listed on the first page of this letter.

Very truly yours,


CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 7, 2019

Via electronic mail
Mr. Michael Weaver
Founder and Publisher
Great Rivers Media
michael@greatriversmedia.com

Via electronic mail
The Honorable Benjamin L. Goetten
Jersey County State's Attorney
201 West Pearl Street
Jerseyville, Illinois 62052
bgoetten@gmail.com

RE: OMA Request for Review – 2018 PAC 55379

Dear Mr. Weaver and State's Attorney Goetten:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Personnel Committee of the Jersey County Board (Board) held a meeting on August 20, 2018, at a location that was not convenient and open to the public, and failed to create a verbatim recording of its closed session meeting held that same day.

BACKGROUND

On October 19, 2018, this office received Mr. Michael Weaver's Request for Review alleging that the Committee held a meeting August 20, 2018, that was not open to the public and that took place in a different location than the one listed on the agenda. Mr. Weaver also alleges that the Committee held a closed session during that meeting and did not create a verbatim recording of the closed session. On November 2, 2018, this office sent a copy of the Request for Review to the Committee and requested that the Committee or its representative provide a written response to the allegations in the Request for Review and to provide certain information and records for this office's review. On November 14, 2018, the Jersey County

Mr. Michael Weaver
The Honorable Benjamin L. Goetten
March 7, 2019
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State's Attorney, on behalf of the Committee, provided an answer and the requested materials. Mr. Weaver replied on November 26, 2018.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Closed Meeting

Section 2(a) of OMA provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." 5 ILCS 120/2(a) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017. Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication of[,]

* * *for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

If a gathering of public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02 (West 2016)), and the holding of the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2016)).

In his Request for Review, Mr. Weaver asserted that the Committee posted an agenda for its August 20, 2018, meeting that indicated that the meeting would be held at 6:00 p.m. in the Jersey County Board Room. Mr. Weaver stated that, prior to the start of the meeting, the Board chairman directed him to leave the meeting room because the meeting was to be held in closed session. Mr. Weaver stated that he left the building and waited in his car, and that after several minutes, the chairman opened the door to the building, motioned to Mr. Weaver, and told him that the Committee was starting its open session. Mr. Weaver stated that he then went back into the building and the Board Room, but could not locate the chairman, the other Committee members, or the meeting. Mr. Weaver stated that he eventually observed the chairman leave the Board office; the chairman notified Mr. Weaver that the Committee had just held the open

session of its meeting in an interior office space and was now convening in closed session, which Mr. Weaver would not be permitted to attend. Mr. Weaver stated that, "[b]y virtue of the building design, there was no way to see the interior office or to know that a meeting was taking place there."¹ Mr. Weaver also alleges that, based on representations of others at the meeting, that no audio recording was made of the proceedings.

In response, the Board and the Committee chairman, Mr. Donald Little, asserted that the agenda improperly listed the location of the meeting as occurring in the "auditorium," instead of the County Board "office," and that he did not notice the error until meeting time when he found the Committee members, Mr. Weaver, and members of a union bargaining team that also intended to attend the meeting, in the auditorium instead of the office. Chairman Little stated that he told Mr. Weaver that the Committee would be holding a closed meeting, and that Mr. Weaver responded by asserting that a closed meeting nevertheless must start in open session. Chairman Little said he agreed, and that he would hold the Committee's open session in the Board office, but that he needed to discuss a matter with the "bargaining team" before beginning, and asked Mr. Weaver to leave until the meeting began. Chairman Little stated that when the Committee members relocated from the auditorium to the office, he went to look for Mr. Weaver, located him outside the building in his vehicle, "motioned for Weaver to come to the Board office and then waited for him to enter the office in order to start the meeting. Weaver did not come to the opening session of the Personnel Committee[.]"² Chairman Little further asserted that the Committee voted in open session to go into closed session, and after that motion was approved, returned to the Auditorium to hold the closed session. Upon his return to the Auditorium, Chairman Little stated that he saw Mr. Weaver and informed him that the Committee had held its open session in the office, was now convening closed session, and therefore, Mr. Weaver would need to leave. Chairman Little did not directly respond to the allegation in the Request for Review that the office in which the meeting was held was an "interior office" and that the design of the building made it difficult to see the interior office or observe a meeting being held there. Finally, Chairman Little acknowledged that the Committee did not make a verbatim recording of the closed session meeting.

Mr. Weaver replied, disputing in part Chairman Little's recitation of the events that occurred that evening. Mr. Weaver stated that after Chairman Little motioned for him to return to the building, he disappeared inside the building before Mr. Weaver could follow him. Mr. Weaver asserted that "[i]t was not possible to see where he went because of the angle of the

¹OMA-Request for Review by Public Access Counsel (PAC), from Michael Weaver (October 19, 2018).

²Letter from Benjamin L. Goetten, Jersey County State's Attorney, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (November 13, 2018), Attachment at 1.

sun against the glass entrance doors and I assumed he went into the auditorium to open the meeting. I walked into the auditorium and only the union side of the meeting was there. They advised that the board members had left but were not sure where they had went to. I then searched through the entire building but saw no obvious sign of a meeting anywhere.³

There is no dispute that the Committee held a "meeting," as defined in section 1.02 of OMA, on August 20, 2018. We note that Mr. Weaver and Chairman Little appear to use different nomenclature for the room in which the meeting was scheduled to be held. Mr. Weaver and the agenda describe the location as the "Jersey County Board Room," while Chairman Little referred to it as the auditorium. Mr. Weaver asserted that the Jersey County Board Room is a corner of the auditorium in which small meetings are routinely held. Based on Chairman Little's response, it appears that not only Mr. Weaver, but also the Committee members and union representatives, understood the location of the meeting to be the auditorium.

Chairman Little asserted that the agenda erroneously listed the location of the meeting and it should have stated that the meeting was to be held in the Board office. However, upon realizing the error on the agenda, Chairman Little nevertheless convened the meeting in the Board office, instead of the location listed on the agenda. Notably, he did so even though he, the other committee members, and Mr. Weaver (who had already indicated his interest in attending the meeting) were present at the place listed on the agenda, at the date and time at which the meeting was scheduled to begin. Chairman Little did not argue that it was necessary to relocate the meeting from the location listed on the agenda to the Board office, and did not state that he posted any signs re-directing interested members of the public to the new location. Moreover, he did not contest Mr. Weaver's allegation that the Board office is an interior office, that a meeting being held in that office would not be visible from the entrance to the building, and that the Board routinely held smaller meetings in the section of the auditorium known as the Board room. Accordingly, by holding its August 20, 2018, meeting in a location different from that listed on the agenda and in a location that Mr. Weaver was unable to find, the Committee violated sections 2(a) and 2.01 of OMA by holding a meeting at a place other than the place specified on the agenda and at a location that was not convenient and open to the public.

The meeting minutes from the August 20, 2018, meeting indicate that the meeting was called to order at 6:08 p.m., the Committee voted to enter closed session, and then entered closed session at 6:09 p.m. Because the Committee did not take final action at the August 20, 2018, meeting, no remedial action is necessary. However, this office reminds the Committee to ensure that the notice and agenda of all Committee meetings correctly identify the location of the meeting.

³E-mail from Michael Weaver to Public Access (November 26, 2018).

Mr. Michael Weaver
The Honorable Benjamin L. Goetten
March 7, 2019
Page 5

Closed Session Recording

All public bodies are required to "keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording." 5 ILCS 120/2.06(a) (West 2016)). Although this requirement is unambiguous, the Committee admitted that it did not create a verbatim recording of the August 20, 2018, closed session meeting. Accordingly, the Committee also violated section 2.06(a) of OMA. Although there does not appear to be any action that the Committee can take at this time to remedy its violation of section 2.06(a) of OMA, this office requests that the Committee take measures to ensure that all closed sessions are properly recorded.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6437 or lbartelt@atg.state.il.us. This letter serves to close this file.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 7, 2019

Via electronic mail

The Honorable Danny Gibbs, Member
Saline County Board
1095 Feazel Road
Harrisburg, Illinois 62946
sidcotrash@hotmail.com

Via electronic mail

The Honorable Jay Williams, Chair
Saline County Board
10 East Poplar Street, Suite 17
Harrisburg, Illinois 62946
c/o Helen Dunn
Saline County Board Office
countyboard02@salinecounty.illinois.gov

RE: OMA Request for Review – 2019 PAC 56505

Dear Mr. Gibbs and Mr. Williams:


On January 22, 2019, the Public Access Bureau received a Requests for Review from Mr. Danny Gibbs pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Saline County Board (Board) violated OMA on November 27, 2018, by approving minutes of its October 25, 2018, meeting that were inaccurate. In particular, Mr. Gibbs alleged that the minutes of the October 25, 2018, meeting listed that a motion to amend the agenda to include a solid waste ordinance and a vote on that motion when no motion or vote actually occurred.

On January 28, 2019, the Public Access Bureau sent the Board a copy Mr. Gibbs Request for Review and requested that the Board respond to the allegation. On February 5, 2019, the Board responded to this office by stating that the incorrect information on the October 25, 2018, meeting minutes was a scrivener's error and would be corrected at its next meeting. On March 1, 2019, the Board sent this office a letter stating that at its February 28, 2019,

The Honorable Danny Gibbs
The Honorable Jay Williams
March 7, 2019
Page 2

meeting, it had amended the minutes of the October 25, 2018, meeting by redacting the reference to a motion and vote on the solid waste ordinance. Because the Board has corrected the minutes of its October 25, 2018, meeting to comply with section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)), this office concludes that no further action is warranted. Accordingly, this letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

56505 o inf r co

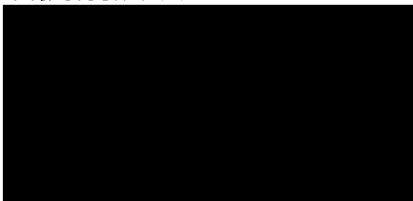


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 7, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57090


Dear [REDACTED]

On March 2, 2019, the Public Access Bureau received your Request for Review in which you allege that the City of Elmhurst Board of Fire and Police Commissioners (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)) in connection with its December 17, 2018, special meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. (Emphasis added.)**

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence.



March 7, 2019
Page 2

You e-mailed your Request for Review to this office on March 2, 2019, which is more than 60 days after you allege that the Board improperly took final action on matters that were not adequately identified on the agenda for its December 17, 2018, special meeting. Your Request for Review states that the minutes were made publicly available shortly after the Board approved them at its February 4, 2019, meeting, and asserts that "[a] person utilizing reasonable diligence would have discovered the alleged violation on or shortly after February 4, 2019. I am filing my Request for Review within 60 days of that date. Therefore, I believe the Request for Review is filed in a timely manner."¹

We disagree. February 4, 2019, was 11 days before the initial 60-day period for filing a Request for Review expired. A person who would have discovered facts concerning a violation within the initial 60-day period by using reasonable diligence may not avail himself or herself of the extended period for filing a Request for Review under the plain language of section 3.5(a) of OMA. Because you did not submit your Request for Review before the statutory period for doing so expired, this office lacks authority to review your allegations concerning the Board's December 17, 2018, special meeting.


Accordingly, this file is closed. If you have any questions, you may contact me at the Chicago address on the first page of this letter or at (312) 814-6437.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau

57090 o no fi war mun

cc: Mr. Emil D. Haddad
Chairman, Board of Police and Fire Commissioners
City of Elmhurst
209 North York Street
Elmhurst, Illinois 60126

¹E-mail from  to Public Access [Bureau, Office of the Attorney General (March 2, 2019).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 7, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57095


Dear [REDACTED]

On March 2, 2019, the Public Access Bureau received your Request for Review in which you allege that the City of Elmhurst Senior Citizens Commission (Commission) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et. seq.* (West 2016)) in connection with its November 14, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence.

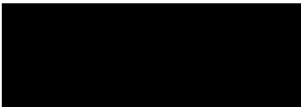

March 7, 2019
Page 2

You e-mailed your Request for Review to this office on March 2, 2019, which is more than 60 days after you allege that the Commission improperly took final action on matters that were not adequately identified on the agenda for its November 14, 2018, special meeting. Your Request for Review states that the minutes were made publicly available shortly after the Commission approved them at its January 9, 2019, meeting, and asserts that "[a] person utilizing reasonable diligence would have discovered the alleged violation on or shortly after January 9, 2019. I am filing my Request for Review within 60 days of that date. Therefore, I believe the Request for Review is filed in a timely manner."¹


We disagree. January 9, 2019, was four days before the initial 60-day period for filing a Request for Review expired. A person who would have discovered facts concerning a violation within the initial 60-day period by using reasonable diligence may not avail himself or herself of the extended period for filing a Request for Review under the plain language of section 3.5(a) of OMA. Your Request for Review does not assert that you discovered the alleged violations outside of the initial 60-day period. Further, you could have discovered facts concerning the alleged violations by attending the open session portion of the Commission's November 14, 2018, meeting. *See* Ill. Att'y Gen. PAC Req. Rev. Ltrs. 43930 and 43932, issued November 16, 2016, at 2 (Request for Review submitted more than 60 days after public body allegedly failed to post notice of meeting on its website was untimely because alleged violation would have been apparent to a person exercising reasonable diligence at the time of the meeting). Because you did not submit your Request for Review before the statutory period for doing so expired, this office lacks authority to review your allegations concerning the Commission's November 14, 2018, meeting.


Accordingly, this file is closed. If you have any questions, you may contact me at the Chicago address on the first page of this letter or at (312) 814-6437.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau

57095 o no fi war mun

¹E-mail from  to Public Access [Bureau, Office of the Attorney General (March 2, 2019).


March 7, 2019

Page 3

cc: Ms. Cathy Jordan
Chairperson, Senior Citizens Commission
City of Elmhurst
209 North York Street
Elmhurst, Illinois 60126



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 11, 2019

Via electronic mail



Re: FOIA and OMA Requests for Review – 2016 PAC 40115; 2016 PAC 40988;
2016 PAC 41158; 2016 PAC 41368; 2016 PAC 41646; 2016 PAC 41647; 2016 PAC 41648;
2016 PAC 41649; 2016 PAC 41650; 2016 PAC 41651; 2016 PAC 41652; 2016 PAC 43326;
2016 PAC 43549; 2016 PAC 43618; 2016 PAC 43636; 2016 PAC 43900; 2016 PAC 45204

Dear



On March 8, 2019, you informed the Public Access Bureau by telephone that you no longer seek this office's assistance with the above-captioned Requests for Review concerning the City of Collinsville from prior to December 2016. Accordingly, these files are now closed. Please contact me at (312) 814-8413 or jjones@atg.state.il.us if you have questions. Thank you.

Very truly yours



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

40115 40988 41158 41368 41646 41647 41648 41649 41650 41651 41652 43326 43549 43618
43636 43900 45204 f and o wdrawn mun

cc: *Via electronic mail*
The Honorable Kim Wasser
City Clerk
City of Collinsville
125 South Center Street
Collinsville, Illinois 62234
kwasser@collinsvilleil.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 11, 2019

Via electronic mail

RE: FOIA Request for Review – 2019 PAC 56976

Dear [REDACTED]

The Public Access Bureau has received your Request for Review alleging violations of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Village of Glenwood Plan Commission (Commission). Our review of the information you have furnished, however, provides no basis for the Public Access Counselor to conclude that the Commission has violated OMA.

On February 25, 2019, this office received your Request for Review alleging that the Commission failed to hold regular monthly meetings and held only two meetings in 2018. You also alleged that the minutes for the Commission's October 2018 meeting are unavailable. The other two allegations in your Request for Review relate to alleged failures of the Commission to report findings and collect plats and other information. You also provided information about an individual Commission member.

Among other things, OMA requires public bodies to conduct public business openly (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018), provide advance notice of meetings (5 ILCS 120/2.02 (West 2016)), and make publicly available a schedule of all its regular meetings for its calendar or fiscal year (5 ILCS 120/2.03 (West 2016)). No provision of OMA, however, requires public bodies to hold a certain number of meetings per calendar year or provides that a public body violates OMA by falling short of its goal to meet monthly. Because your Request for Review does not provide a summary of facts from which this office could conclude that the Commission violated OMA, we have determined that no further action is warranted as to this allegation.


March 11, 2019

Page 2

You also contend that you were informed that minutes for the Commission's October 2018, meeting are not available. Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides, in relevant part, that:

A public body shall approve the minutes of its open meeting within 30 days after that meeting **or at the public body's second subsequent regular meeting, whichever is later**. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. (Emphasis added.)

Your Request for Review states that the Commission has met only two times in the past year. Therefore, the information you provided indicates that the Commission has not yet held a second subsequent meeting during which it could approve the minutes of any meetings in the past year. Under the plain language of section 2.06(b), a public body does not need to make its minutes available until ten days after the minutes are approved. Accordingly, your claim regarding the approval of the minutes is premature.

Further, pursuant to section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2016)), the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)). Therefore, your allegations regarding the failure of the Commission to report findings and collect final plats and other information are beyond the scope of this office's authority.

This office has determined that no further action on this Request for Review is warranted. If you have any questions, you may contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.


Very truly yours,



S. PIYA MUKHERJEE
Assistant Attorney General
Public Access Bureau

56976 o no fi war mun

cc: Mr. Larry Williams
Chairman
Plan Commission
Village of Glenwood


March 11, 2019
Page 3

One Asselborn Way
Glenwood, Illinois 60425



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 12, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 56971

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Village of Lincolnwood (Village) violated OMA.

Your Request for Review alleges that the Village violated OMA by failing to hold a public meeting concerning the consolidation of its police and fire dispatch services on March 1, 2017.

Among other things, OMA generally requires public bodies to conduct public business openly during meetings (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018), provide advance notice of meetings (5 ILCS 120/2.02 (West 2016)), and approve minutes of meetings (5 ILCS 120/2.06(b) (West 2016)). No provision of OMA, however, requires public bodies to hold meetings concerning specific matters such as the consolidation of police and fire dispatch services. Because your Request for Review does not provide a summary of facts from which this office could conclude that any public body of the Village violated OMA, we have determined that no further action is warranted as to this matter. 5 ILCS 120/3.5(a) (West 2016) (requiring a person who submits a Request for Review to provide "a summary of the facts supporting the allegation.").

[REDACTED]
March 12, 2019

Page 2

This file is closed. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

56971 o no fi war mun

cc: *Via electronic mail*
Ms. Anne Marie Gaura
Village Manager
Village of Lincolnwood
6900 North Lincoln Avenue
Lincolnwood, Illinois 60712
agaura@lwd.org

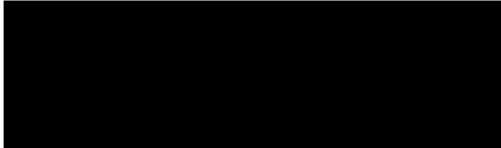


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 12, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57168

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Illinois State Police (ISP) violated OMA.

Your Request for Review alleges that ISP revoked your Firearm Owners Identification (FOID) card without holding a public meeting about that decision.

Among other things, OMA generally requires public bodies to conduct public business openly during meetings (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018), provide advance notice of meetings (5 ILCS 120/2.02 (West 2016)), and approve minutes of meetings (5 ILCS 120/2.06(b) (West 2016)). No provision of OMA, however, requires police departments or State agencies to hold public meetings concerning a specific matter such as whether to revoke a FOID card. Because your Request for Review does not provide a summary of facts from which this office could conclude that ISP violated OMA, we have determined that no further action is warranted as to this matter. 5 ILCS 120/3.5(a) (West 2016) (requiring a person who submits a Request for Review to provide "a summary of the facts supporting the allegation.").

[REDACTED]
March 12, 2019

Page 2

This file is closed. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

57168 o no fi war sa pd

cc: *Via electronic mail*
Ms. Erin Davis
FOIA Officer
Illinois State Police
801 South Seventh Street, Suite 1000-S
Springfield, Illinois 62703
erin_davis@isp.state.il.us

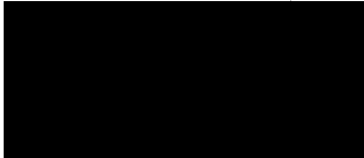


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 14, 2019

Via electronic mail



RE: OMA Request for Review – 2016 PAC 41081

Dear [REDACTED]

You submitted the above-captioned Request for Review alleging that the Board of Trustees of the Village of White City (Board) and its Finance Committee violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)). On March 13, 2019, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you advised this office that you no longer wished to pursue the above-captioned Request for Review. Accordingly, this letter shall close this matter. If you have any questions, please contact me at 312-814-5201.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

41081 o n f r m u n

cc: *Via electronic mail*
The Honorable Steve Subick
President
Village of White City
884 South Main Street
Mount Olive, Illinois 62069
villageofwhitecity@madisontelco.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 15, 2019

Via electronic mail

Ms. Terra Sinkevicius
Mandarin Chinese Language Teacher
Social Science Teacher
P.P.L.C. Governing Body Member
James Wadsworth Elementary School
tjsinkeviciu@cps.edu

RE: OMA Request for Review – 2019 PAC 56468

Dear Ms. Sinkevicius:

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in this matter.

On January 16, 2019, you submitted a Request for Review to the Public Access Bureau raising OMA allegations against James Wadsworth Elementary School's Local School Council (LSC) and its Professional Personnel Leadership Committee (Committee).

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a **summary of the facts supporting the allegation.**" (Emphasis added.)

As to the LSC, you alleged:

The LSC has not posted any meeting minute notes and are handling public matters in closed sessions such as budget transfers. The LSC requires all in attendance to sign in as a guest even if they are only observing. Meetings generally are only 13 minutes long with no information as to how decisions are made regarding the

school and principal evaluations. In addition, public notices and agendas for closed session meetings are not posted.^[1]

Your allegations concerning the LSC are general in nature and devoid of pertinent facts, such as the dates of the meetings at issue. Your allegation that the LSC has discussed improper matters, such as budget transfers, in closed session is insufficient to warrant further action by this office absent facts about when and how this conduct allegedly occurred and the specific nature of the discussions. Your claim that the LSC requires meeting attendees to sign in as guests does not allege that the LSC improperly restricted public access to an open meeting because it does not indicate that anyone objected to signing in or was prohibited from attending a meeting because of being unwilling to sign in. Your claim that LSC meetings are typically brief and lacking in information does not allege a violation of section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) absent a summary of facts detailing the proceedings at a specific meeting.² Your claim that the LSC has not posted meeting minutes does not warrant further action by this office because section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) requires only the "governing body" of a public body to post its meeting minutes online. That role of "governing body" is filled by the Board of Education of Chicago Public Schools (CPS)—not the LSC. Moreover, your allegation that "public notices and agendas for closed session meetings are not posted" is vague and does not allege a violation of OMA. The Act does not require a public body to provide advance notice or an agenda for closed session discussions. 5 ILCS 120/2a (West 2016) ("At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act.").

Turning to the Committee, you alleged that the two chairpersons "have not allowed members of the public to attend" meetings, "have been removing public notices off the walls of the school building about the meetings or not posting notices, and are refusing to post meeting minute notes."³ You did not, however, identify the dates of any such instances or the applicable meetings. Although it would violate OMA for the Committee to: (1) prevent members of the public from attending open meetings, (2) fail to make its meeting agendas

¹E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to Sarah Pratt (January 16, 2019).

²Section 2(e) of OMA provides: "Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

³E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to Sarah Pratt (January 16, 2019).


Ms. Terra Sinkevicius
March 15, 2019
Page 3

continuously available for at least 48 hours in advance of its meetings,⁴ or (3) neglect to make its open session meeting minutes publicly available within 10 days after approval, there is an insufficient basis for this office to take further action absent additional facts supporting your allegations.

Because your Request for Review did not provide a factual basis from which this office could conclude that any public body associated with James Wadsworth Elementary School violated OMA, the Public Access Bureau has determined that no further action is warranted in this matter. You may wish to submit another Request for Review that provides a more detailed summary of the facts supporting any allegations that the LSC or the Committee violated OMA within the 60 days prior to your submission. See 5 ILCS 120/3.5(a) (West 2016).

This letter closes this file. Please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

56468 o no fi war sd

cc: *Via electronic mail*

Mr. Marcus Pittman (for forwarding to the LSC chairperson)
Chicago Public Schools Office of Local School Council Relations
Garfield Park Office
2651 West Washington Boulevard, 3rd Floor
Chicago, Illinois 60612
mhpittman@cps.edu

Ms. Aldina Loggins and Ms. Cynthia Brawner
Chairpersons, Professional Personnel Leadership Committee
James Wadsworth Elementary School
6650 South Ellis Avenue
Chicago, Illinois 60637

⁴5 ILCS 120/2.02(c) (West 2016) ("The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting.").



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 18, 2019

Via electronic mail



Via electronic mail

The Honorable Avis LaVelle
Vice President, Board of Commissioners
Chicago Park District
541 North Fairbanks
Chicago, Illinois 60611
commissioners@chicagoparkdistrict.com

Via electronic mail

Ms. Dorothy Carroll
Counsel
Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
dorothy.carroll@chicagoparkdistrict.com

RE: OMA Request for Review – 2018 PAC 54091

Dear [REDACTED] Ms. LaVelle, and Ms. Carroll:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau is unable to conclude that the Board of Commissioners (Board) of the Chicago Park District (Park District) complied with the requirements of OMA in connection with the posting of the Board's May 9, 2018, meeting minutes on its website.

[REDACTED]
The Honorable Avis LaVelle
Ms. Dorothy Carroll
March 18, 2019
Page 2

BACKGROUND

On July 19, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA by failing to post a copy of the Board's May 9, 2018, meeting minutes on its website. [REDACTED] stated that the Board held a meeting on May 9, 2018, and that "[t]he minutes for that meeting would have been approved at the next meeting on June 13, 2018."¹ He asserted that the Board had yet to post a copy of the minutes on its website to date. [REDACTED] contended: "By not posting the minutes, the Park has made it more difficult to review for OMA compliance."² This office construed [REDACTED] Request for Review as alleging a violation of section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)).

On July 26, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the Board's May 9, 2018, meeting agenda and minutes, together with a written response to [REDACTED] allegation. In the Board's response, this office asked it to clarify whether full-time staff maintains the Park District website and, if so, to explain whether the Board had approved and posted the minutes of the May 9, 2018, meeting on the website; this office also asked the Board to provide copies of the agenda and minutes of the meeting in which the May 9, 2018, meeting minutes were approved. On August 2, 2018, this office received a written response and copies of the Board's May 9, 2018, meeting agenda and minutes as well as the Board's July 11, 2018, meeting agenda. In its written response, the Board stated that it had yet to publish the July 11, 2018, meeting minutes but provided this office with a copy of a record, accessible on the Park District online calendar,³ documenting the Board's approval of the minutes of the May 9, 2018, meeting (and a June 13, 2018, meeting) at its July 11, 2018, regular meeting. On August 8, 2018, this office forwarded a copy of the Board's written response to [REDACTED] he replied on August 17, 2018.


DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act

¹E-mail from [REDACTED] to [Public Access Bureau] (July 19, 2018).

²E-mail from [REDACTED] to [Public Access Bureau] (July 19, 2018).

³The record may be accessed by locating the Board's June 13, 2018, meeting on the Park District online calendar at: <https://chicagoparkdistrict.legistar.com/Calendar.aspx>.


The Honorable Avis LaVelle
Ms. Dorothy Carroll
March 18, 2019
Page 3

is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. **Beginning July 1, 2006, at the time it complies with the other requirements of this subsection, a public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body.** Beginning July 1, 2006, any minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting. (Emphasis added.)

In its response to this office, the Board stated that it had scheduled to approve the May 9, 2018, meeting minutes at its June 13, 2018, meeting but that it did not have a quorum of commissioners present at the June 13, 2018, meeting to vote on the matter or on any other issue. Nevertheless, the Board asserted that "rather than cancel the meeting, the Board members present did listen to testimony from [the] public and a presentation on the Park District's Minority and Women Owned Business Enterprise Program (MWBE) update. Neither of these activities required a vote from the Board."⁴ The Board stated that it "approved the May 9, 2018 minutes at its first subsequent regular meeting held July 11, 2018."⁵ With regard to the posting of minutes on the Park District website, the Board asserted:

The Park District has one person, the Secretary of the Board of Commissioners, who works with a company called

⁴Letter from Dorothy D. Carroll, Counsel, Chicago Park District, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 2, 2018).

⁵Letter from Dorothy D. Carroll, Counsel, Chicago Park District, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 2, 2018).

[REDACTED]
The Honorable Avis LaVelle
Ms. Dorothy Carroll
March 18, 2019
Page 4

Granicus to maintain Board meeting records. Some parts of publication associated with the Granicus software are controlled by the Board Secretary and some controlled by Granicus. It is not an automated process and hence both parties work together to stay in compliance with the OMA and other applicable regulations.¹⁶¹

The Board stated that it posted a copy of the May 9, 2018, meeting minutes on the website on July 27, 2018. Additionally, the Board noted that verbatim recordings of the open session portion of its meetings are available on the website.

In reply to that answer, [REDACTED] maintained that the Board failed to comply with the requirements of OMA. He asserted, in pertinent part: "While the meeting minutes were eventually posted, the Chicago Park District failed to post them timely. They were not posted within 10 days[.]"⁷

On February 11, 2019, this office reached out to the Park District's Counsel, Ms. Dorothy Carroll, and asked for clarification regarding who was responsible for posting meeting minutes on the Park District website. In response, Ms. Carroll stated that the Secretary "works with our IT department and Granicus to draft and post agendas, post agendas, post meeting minutes, and manage the information generated through meetings."⁸ Ms. Carroll further explained that the Park District uses two Granicus products/services, InSight and Legistar, to manage its meeting materials, and that "[t]he Secretary posts all of the foregoing information to the [Park District] Legistar site."⁹ Additionally, she provided this office with copies of the Park District's agreement with Granicus, Granicus' Proposal/Statement of Work for the Park District (Proposal), and additional information related to the agreement. She also directed this office to Chapter 6 of the Chicago Park District Code (Code) describing the powers and duties of the various offices of the Park District, including the Office of the Secretary.¹⁰


⁶Letter from Dorothy D. Carroll, Counsel, Chicago Park District, to Teresa Lim, Assistant Attorney General, Public Access Bureau (August 2, 2018).

⁷E-mail from [REDACTED] to [Public Access Bureau] (August 17, 2018).

⁸E-mail from Dorothy [Carroll] to Teresa [Lim] (February 13, 2019).

⁹E-mail from Dorothy [Carroll] to Teresa [Lim] (February 13, 2019).

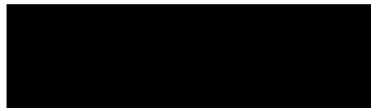
¹⁰Chicago Park District Code, Chapter VI – Staff Officers, Section B. Office of the Secretary, B.2. Powers and Duties (amended June 14, 2000), available at https://assets.chicagoparkdistrict.com/s3fs-public/documents/page/CPD_Code_Chapter_06.pdf.


The Honorable Avis LaVelle
Ms. Dorothy Carroll
March 18, 2019
Page 5

This office's review of the Board's July 11, 2018, regular meeting agenda and online calendar record confirmed that the Board approved its May 9, 2018, meeting minutes on that date. The Board acknowledged that it posted a copy of the May 9, 2018, minutes on its website on July 27, 2018, which is more than 10 days after it approved those minutes. Although the Board asserted that the Secretary works with its IT department and Granicus to prepare and post meeting materials, the Board has not claimed that its website is not maintained by the Park District's full-time staff or that it is not subject to the posting requirements of section 2.06(b). Accordingly, based on the available information, this office concludes that the Board did not post its May 9, 2018, meeting minutes within 10 days of approval as required by section 2.06(b) of OMA. Because the Board has since posted a copy of its May 9, 2018, meeting minutes on its website, no remedial action is necessary. This office reminds the Board, however, that it must post the minutes of its regular meetings within 10 days after approving them.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

54091 o 206 minutes improper pkd

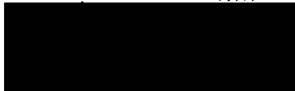


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 19, 2019

Via electronic mail



RE: OMA Requests for Review – 2017 PAC 49683; 49877

Dear



The Public Access Counselor has received your Requests for Review concerning alleged Open Meetings Act (OMA) violations by the Whiteside County Airport Board (Board) in connection with various August, 2017, and September, 2017, meetings. In a March 18, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that these matters may be closed. Accordingly, this letter serves to close these matters. If you have questions, please contact me at the Springfield address below.

Very truly yours,



CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

49683 49877 o i n f r c o

cc: Whiteside County Airport Board
Attention: OMA Designee
Whiteside County Courthouse
200 East Knox Street
Morrison, Illinois 61270



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 20, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 57309

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/ 3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received March 19, 2019, you claimed that at its March 18, 2019, meeting, the City of Waukegan City Council (Council) applied its public comment rule prohibiting electioneering inconsistently by interrupting your comments, but permitting three other individuals to speak on election-related topics without interruption.

Section 3.5(a) of OMA (5 ILCS 120/ 3.5(a) (West 2016)) provides that "[a] person who believes that a **violation of this Act by a public body has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the **facts supporting the allegation.**" (Emphasis added.)

Section 2.06(g) of OMA (5 ILCS 120/ 2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules, or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules but those rules unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7. This office has previously determined that in order to warrant further action by this office, a Request for Review concerning public comment must set forth facts indicating that a member of the public attempted to address public officials during an open


March 20, 2019

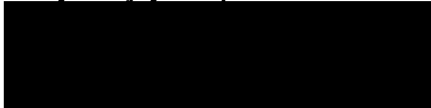
Page 2

meeting but was improperly restricted by the public body from doing so. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2 (determining that a Request for Review alleging that a board's public comment rules violated section 2.06(g) of OMA did not warrant further inquiry because the Request for Review did not allege that anyone who attempted to address the board during an open meeting was improperly denied an opportunity to speak).*

Your Request for Review alleged that the Council permitted certain individuals to speak on election-related topics, but prohibited your comments on the same or similar topics. However, this office has viewed portions of the recording of the March 18, 2019, Council meeting,¹ and did not discern that you were interrupted during your comments regarding aldermanic candidates. Although the Mayor struck his gavel once after you began your comments regarding his mother's lawsuits, you were permitted to continue your comments on that topic without further interruption until your three minutes of allotted speaking time expired. This office has previously determined that a brief interruption that does not preclude a speaker from completing his or her public comment does not constitute an improper restriction on public comment. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 37496, issued December 11, 2015.* You did not allege that anyone else was denied the opportunity to address the Council during the March 18, 2019, meeting. Accordingly, because your March 19, 2019, Request for Review did not allege facts supporting the allegation that the Council violated section 2.06(g) of OMA during its March 18, 2019, meeting, this office will take no further action in this matter.²

Accordingly, this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or at (217) 524-7958.


Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

57309 o no fi war mun

¹2019-03-18 City of Waukegan City Council Meeting, *available at* <https://www.youtube.com/watch?v=bYDkgzRgSOY> (last visited March 20, 2019).

²This office will address your complaints alleging that you were improperly prohibited from addressing the Council during its February 4, 2019, and February 19, 2019, meetings, in connection with its review of Request for Review 2019 PAC 56926.


March 20, 2019

Page 3

cc: *Via electronic mail*
The Honorable Sam Cunningham, Mayor
City of Waukegan
100 North Martin Luther King Jr., Avenue
Waukegan, Illinois 60085
mayor.cunningham@waukeganil.gov



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 21, 2019

Via electronic mail

[REDACTED]

RE: OMA Request for Review – 2018 PAC 53264

Dear [REDACTED]

The Public Access Counselor has received your Request for Review concerning an Open Meetings Act (OMA) violation by the Grand Prairie Community Consolidated School District No. 6 Board of Education (Board) in connection with its May 15, 2018, meeting. In a March 21, 2019, telephone conversation with a Supervising Attorney in the Public Access Bureau, you confirmed that this matter may now be closed due to the passage of time but that you reserve the right to submit future Requests for Review should the Board violate the requirements of OMA.

Accordingly, this letter serves to close this matter. If you have questions, please contact me at (217) 785-7438 or at the Springfield address below.

Very truly yours,

[REDACTED]

CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

53264 o inf r sd

cc: Superintendent Stuart Parks
Grand Prairie Community
Consolidated School District No. 6
21462 North Richview Lane
Centralia, Illinois 62801



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 22, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 57197

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons that follow the Public Access Bureau has determined that no further action is warranted in this matter.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.] * * * The request for review * * * must include a summary of the facts supporting the allegation."

Your Request for Review alleges that the December 3, 2018, meeting minutes of the Peoria County Board (Board), which the Board approved on January 10, 2019, violated OMA because the minutes listed the addresses of those persons who made public comment at the meeting. The requirement to keep minutes is governed by section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)), which provides:

All public bodies shall keep written minutes of all their meetings, whether open or closed * * *. Minutes shall include, **but need not be limited to:**

- (1) the date, time and place of the meeting;
- (2) the members of the public body recorded as either

March 22, 2019

Page 2

present or absent and whether the members were physically present or present by means of video or audio conference; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

You have not alleged that the Board failed to include any of the specifically required information in the minutes of its December 3, 2018, meeting. Rather you allege that including addresses of individuals who participated in public comment in the minutes could discourage members of the public from exercising their statutory right to address the Board pursuant to section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)). However, neither section 2.06(a) nor section 2.06(g) prohibits public bodies from including speakers' addresses in meeting minutes. Because the facts you have alleged do not indicate that the Board violated the requirements of OMA, this office has determined that no further action is warranted in this matter. Accordingly, this file is closed.¹

Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

57197 o no fi war co

cc: *Via electronic mail*
The Honorable Andrew Rand
Chairman
Peoria County Board
324 West Main Street, Room 502
Peoria, Illinois 61602
arand@peoriacounty.org

¹We note, however, that requiring a member of the public to provide his or her complete home address as a condition for providing public comment is impermissible under section 2.06(g) of OMA. See Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7. You have not alleged that the Board prohibited any individual from addressing the Board because he or she refused to provide a home address.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 22, 2019

Via electronic mail

Mr. Kirk Allen
P.O. Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

RE: OMA Request for Review – 2019 PAC 57237
FOIA Request for Review – 2019 PAC 57238

Dear Mr. Allen:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)) and section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in these matters.

On March 13, 2019, you submitted a Request for Review concerning actions of the DuPage Township Board (Board). Because you alleged violations of both OMA and FOIA, this office opened two separate files, although they are consolidated for this determination. You stated:

On February 15, 2019, the DuPage Township Board went into closed session for the purpose of discussing personnel and the appointment of a new Supervisor. This closed session lasted approximately three hours.

It has come to our attention that there were discussions during these 3 hours of closed session that were not discussions permitted by the Open Meetings Act.^[1]

¹E-mail from Kirk Allen to Public Access [Bureau] (March 13, 2019).

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a request for review must be written, signed by the requester, and "must include a summary of the facts supporting the allegation." Your Request for Review has not provided any facts to support the allegation that the Board engaged in improper closed session discussion. You state only that "it has come to our attention" that the Board discussed matters outside the cited exceptions; a statement devoid of any supporting facts provides an insufficient basis for this office to take further action.

On February 17, 2019, you submitted a FOIA request to DuPage Township (Township) seeking "[a] copy of the applicable closed session recordings of discussions that were outside the authorized exemptions for closed session that took place during the February 15th, 2019 meeting of the Board of Trustees."² On February 25, 2019, the Township extended the time to respond pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2016)). On March 4, 2019, the Township cited section 2.06(e) of OMA (5 ILCS 120/2.06(e) (West 2016)) as its basis for denying your request. Section 2.06(e) of OMA provides, in pertinent part:

Unless the public body has made a determination that the verbatim recording [of a closed session] no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act.

The Township asserted that its Board of Trustees "[had] made no determination that this recording no longer requires confidential treatment."³

That same day, you replied to the Township, asking whether "the Township is taking the position that all closed session discussions during the meeting in question met the exemptions provided under OMA[.]"⁴

Your March 13, 2019, Request for Review also disputed the denial of your FOIA request. You asserted that the Township did not respond to your question seeking clarification regarding the Township's position on the closed session discussions. Additionally, you alleged

²E-mail from Kirk Allen, Edgar County Watchdogs, to [Amy Albright] (February 17, 2019).

³E-mail from Amy Albright, DuPage Township Human Resource Coordinator, to [Kirk] Allen (March 4, 2019).

⁴E-mail from Kirk Allen to [Amy Albright] (March 4, 2019).

Mr. Kirk Allen
March 22, 2019
Page 3

that the Township failed to comply with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)).

First, although you also asked the Township to clarify whether it believed the entirety of the closed session discussion was proper, a public body is not required to answer questions in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989). Because section 2.06(a) prohibits the disclosure of closed session verbatim recordings, absent a determination of the public body to the contrary, this office construes the Township's response to your FOIA request as a denial pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018), which exempt from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The Township asserted that the Board had not made a determination that the verbatim recording of the closed session of its February 15, 2019, meeting no longer requires confidential treatment. This office has not received information to the contrary. Therefore, no further action is warranted as to your claim that the Township improperly denied your FOIA request.⁵

⁵With regard to the Township's compliance with the procedural requirements for denying a request, section 9(a) of FOIA provides:

Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.

In the Township's e-mailed response to your request, the Township cited the specific OMA provision that was the basis for its denial, including the language of that provision. The Township also provided the name and title of the Township employee who appears to have been responsible for denying your request. The Township did not cite section 7(1)(a) of FOIA, nor did it set forth the requisite information concerning your right to request a review by the Public Access Counselor or seek judicial review. This office reminds the Township that a public body is required to include all of the information listed in section 9(a) of FOIA whenever it denies any portion of a FOIA request.

Mr. Kirk Allen
March 22, 2019
Page 4

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

57237 o no fi war mun
57238 f no fi war mun

cc: *Via electronic mail*
Ms. Amy Albright
Human Resource Coordinator
DuPage Township
241 Canterbury Lane
Bolingbrook, Illinois 60440
aalbright@dupagetownship.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 25, 2019

Via electronic mail



RE: OMA Request for Review – 2015 PAC 32974

Dear [REDACTED]


On January 5, 2015, you submitted a Request for Review to the Public Access Bureau under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2016)) alleging that the Vermilion County Board's ad-hoc Wind Farm Committee (Committee) had not kept or circulated minutes from certain meetings in late 2014 where it lacked a quorum.

This office forwarded a copy of your Request for Review to the Committee and asked it to respond to your allegations. The Committee responded that it had approved the minutes on January 12, 2015, when it had a quorum, and had posted them on the County's website on January 15, 2015. You replied by citing a binding opinion issued by this office, Ill. Att'y Gen. Pub. Acc. Op. No. 14-006, issued July 1, 2014, for the proposition that the Committee should release draft minutes taken by the Committee's secretary. That binding opinion, however, did not concern draft minutes, which are generally exempt from disclosure under section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2016)). This office notes that the minutes of each meeting document that the Committee had made audio recordings of the meetings and had offered access to the public. The Committee's approval and dissemination of the minutes resolved your allegation that it had not done so. Accordingly, this file is closed. 5 ILCS 120/3.5(e) (West 2016). Should you have any questions, please contact me at (312) 814-8413.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau


March 25, 2019

Page 2

32974 o infr co

cc: Mr. William T. Donahue
Assistant State's Attorney/Civil Division
Vermilion County Board
6 North Vermilion
Danville, Illinois 61832



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 26, 2019

Mr. David Bohlman
Reporter/Producer
KWQC-TV 6 News
805 Brady Street
Davenport, Iowa 52803

RE: OMA Requests for Review – 2015 PAC 35424; 2015 PAC 35559

Dear Mr. Bohlman:

Mr. Mark Stevens submitted the above-captioned Requests for Review, on behalf of KWQC-TV 6 News, alleging that the Henderson County Board (2015 PAC 35424) and the Henderson County Health Board (2015 PAC 35559) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)). On March 20, 2019, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, you advised this office that Mr. Stevens was no longer an employee at KWQC-TV 6 News and that the station no longer wished to pursue the above-captioned Requests for Review. Accordingly, this letter shall close these matters. If you have any questions, please contact me at 312-814-5201.

Very truly yours,

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

35424 35559 o inf r co

cc: Mr. Colby Hathaway
Henderson County State's Attorney
Henderson County Court House
P.O. Box 605
Oquawka, Illinois 61469



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 26, 2019

Via electronic mail



Via electronic mail

Ms. Alexandra B. Ruggie
Assistant City Attorney
Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201
aruggie@cityofevanston.org

Re: OMA Request for Review – 2018 PAC 55981

Dear [REDACTED] and Ms. Ruggie:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Rules Committee (Committee) of the City of Evanston City Council (Council) violated OMA during its December 3, 2018, meeting by imposing restrictions on the public's right to address the Committee which were contrary to its established and recorded rules.

On December 4, 2018, [REDACTED] filed a Request for Review with the Public Access Bureau alleging that the Committee violated OMA when the Committee's chair allowed each speaker only one minute of public comment. In particular, [REDACTED] asserted that the Committee's allotment of public comment time did not comply with its rules, which "provide[] for three minutes per person during public comment, allocated over a period of 45 minutes."¹ [REDACTED] also alleged that the Committee violated OMA when it permitted the

¹E-mail from [REDACTED] to Public Access, Office of the Attorney General (December 4, 2018).

Ms. Alexandra B. Ruggie
March 26, 2019
Page 2

attorney for an alderman to speak for eight minutes after the public comment period ended without notifying petitioners beforehand that their attorneys would be granted a similar opportunity to address the Committee.

On December 10, 2018, the Public Access Bureau sent a copy of the Request for Review to the Committee and requested that it provide a detailed written answer to [REDACTED] allegation concerning public comment time, together with a copy of the Committee's established and recorded rules for public comment. This office did not receive a response to our December 10, 2018, letter. On December 27, 2018, this office sent the Committee a second letter requesting that it respond to [REDACTED] Request for Review. On January 2, 2019, counsel for the Committee provided this office with a written answer, a copy of the sign-up sheet for public comment at the December 3, 2018, meeting, a copy of the Committee's rules for public comment, and a link to a video recording of the meeting. On January 2, 2019, this office forwarded a copy of the Committee's answer to [REDACTED] she did not reply.

DETERMINATION

It is "the public policy of this State that its citizen shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Rules for Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016), provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

Although OMA does not specifically address the types of public comment rules that a public body may adopt, rules designed to maintain order and decorum are permissible to ensure that meetings are conducted efficiently. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5 (a public body may promulgate reasonable "time, place and

manner" rules aimed at preserving order and decorum which are necessary to further a significant government interest). However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25 (N.D. Ill. 2009).

A rule that promotes order and decorum, such as a rule specifying the amount of time members of the public have to address public officials, does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that because a five-minute time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, the time limit did not violate the speaker's rights under the first amendment to the United States Constitution); *see also Shero v. City of Grove*, 510 F. 2d 1196, 1203 (10th Cir. 2007) (concluding that in a public forum, a city council could impose a three-minute time limitation on public comment because it was "appropriately designed to promote orderly and efficient meetings.").

The Committee is a standing committee of the Council.² The Council's established and recorded rules concerning public comment provide:

6.2 The Council shall provide a period for Citizen Comment. Interested persons shall sign their name, address and the agenda item or other topic to be addressed on a designated citizen participation sheet. A speaker may address the Council for no more than three minutes, and only once per Council meeting. The maximum time period for citizen participation is forty-five minutes. If there are more than 15 speakers, the Mayor will allocate time among the speakers to ensure that citizen comment does not exceed forty-five (45) minutes. The business of the City Council shall commence no later than forty-five (45) minutes after the beginning of Citizen Comment.^[3]

Although authorizing the Mayor to allocate time among more than 15 speakers during a public comment period capped at 45 minutes could facilitate the running of a timely and orderly meeting while maximizing the opportunity for those speakers to address the Committee,

²City of Evanston, Rules and Organization of the City Council of the City of Evanston, §9.2 (July 12, 2018).

³City of Evanston, Rules and Organization of the City Council of the City of Evanston, §6.2 (July 12, 2018).

[REDACTED]
Ms. Alexandra B. Ruggie

March 26, 2019

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the information provided to this office indicates that the Committee instead used its rules to limit the public's ability to address the members of the Committee. In this instance, 19 members of the public signed-up on the citizen participation sheet that was circulated at the beginning of the December 3, 2018, meeting. The chair of the Committee reviewed the sheet and determined that, because more than 15 speakers had signed-up to speak, the amount of public comment time to be allotted would be one minute per speaker. A total of 16 speakers chose to address the Committee, and the public comment portion of the meeting lasted less than 23 minutes. The Committee chair informed several speakers that their one minute of public comment time had expired and requested that those speakers cease their speech.

[REDACTED] Request for Review asserted that the chair chose to limit public comment time to one minute per speaker because she was aware of the probable content of the speakers' speech in light of a recent recommendation from the Board of Ethics. The Committee countered that the chair exercised her discretion under the Council's rules to limit comment to one minute per speaker because a Human Services Committee meeting was scheduled immediately following the Committee meeting. The Committee stated that the Human Services Committee meeting was delayed by nearly an hour and a half from its scheduled start time.

The Committee has not provided an explanation for why the chair's application of its rules to limit public comment to one minute per speaker was necessary to promote order and decorum at the meeting or to further any significant governmental interest. The rule appears to be intended to provide an opportunity for all members of the public who wish to address the Committee to do so within a public comment period that is not to exceed 45 minutes. The manner in which the Committee applied its rule limited the public comment period to less than 23 minutes. Although public bodies have an interest in conserving time and ensuring that all interested parties have an opportunity to speak, the Committee may not unreasonably restrict public comment to accommodate its meeting schedule, particularly where a need for additional time between meetings may have been foreseeable. As an example, suppose 14 members of the public had signed-up on the citizen participation sheet at the Committee meeting instead of 19. Under this scenario, each member would have been entitled to speak for up to three minutes, which means that the public comment period for the meeting may have exceeded 40 minutes. It is unreasonable that, through the use of its rules, the Committee afforded less total time for public comment because more members of the public wished to speak.

Further, it is unclear why it was necessary for the chair to deviate from the 45-minute maximum of public comment time set forth in its rules and limit public comment time to only one minute of comment per speaker when a less restrictive option was available. Because 19 members of the public signed up to speak, the chair could have elected to provide each speaker with 2 minutes of public comment time, which would not have exceeded the 45-minute maximum of public comment time. That the chair chose a more restrictive public comment time

[REDACTED]
Ms. Alexandra B. Ruggie
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limitation than was necessary to adhere to its rules indicates that the Committee's application of the rules was intended to restrict comment from members of the public. Because the Committee's use of its rules served to unreasonably restrict rather than to accommodate the public's right to address the members of the Committee, this office concludes that Committee violated section 2.06(g) of OMA by enforcing its public comment rules to limit public comment to one minute per speaker at its December 3, 2018, meeting.

[REDACTED] second allegation is that the Committee allowed the attorney for an alderman to comment for an extended time outside of the public comment period. This allegation, however, is outside the scope of OMA. As discussed above, section 2.06(g) of OMA is intended to ensure that members of the public have the opportunity to address public officials at public meetings. The Committee's decision to hear comment by the attorney outside of public comment period does not implicate OMA. Because the Public Access Bureau's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2016)), this office will not address this portion of [REDACTED] complaint.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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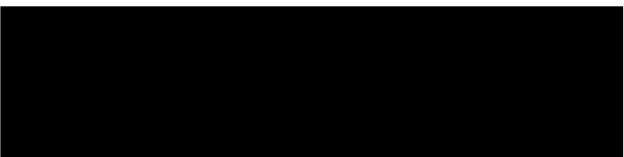


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 26, 2019

Via electronic mail



Via electronic mail

Ms. Mary Beth Harper
Director, Elmhurst Public Library
125 South Prospect Avenue
Elmhurst, Illinois 60126
marybeth.harper@elmlib.org

RE: OMA Request for Review – 2019 PAC 56977

Dear [REDACTED] and Ms. Harper:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Elmhurst Public Library (Library) Board of Trustees (Board) violated the requirements of OMA by failing to conduct a semi-annual review of all of its closed meeting minutes in accordance with section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2016)).

On February 23, 2019, [REDACTED] submitted this Request for Review alleging that the Board violated section 2.06(d) of OMA by failing to conduct a semi-annual review of its closed session meeting minutes since June 19, 2018. On February 28, 2019, this office sent a copy of the Request for Review to the Board and asked it to address [REDACTED] allegations. On March 4, 2019, Library Director Mary Beth Harper responded on the Board's behalf, acknowledging that the Board had not conducted such a review of its closed session minutes within the past six months. However, Ms. Harper asserted that the Board would comply with the requirements of section 2.06(d) at its next regular meeting on March 19, 2019, and implement mechanisms to ensure future compliance. On March 5, 2019, this office forwarded a copy of the

[REDACTED]
Ms. Mary Beth Harper
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Board's response to [REDACTED] In a March 11, 2019, telephone conversation with an Assistant Attorney General in the Public Access Bureau, [REDACTED] reiterated his contentions.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.06(d) of OMA provides, in pertinent part:

Each public body shall periodically, but **no less than semi-annually**, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and **reported in an open session** that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. (Emphasis added.)

The Board acknowledged that it failed to conduct a semi-annual review of its closed session minutes. Accordingly, this office concludes that the Board violated the requirements of section 2.06(d) of OMA. In light of the Board's plans to review closed session minutes both at its March 19, 2019, meeting and on a semi-annual basis going forward, no further remedial action is required.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours,

[REDACTED]

LEO DRAWS
Assistant Attorney General
Public Access Bureau



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 26, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 57244

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons that follow the Public Access Bureau has determined that no further action is warranted in this matter.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.].

* * * The request for review * * * must include a summary of the facts supporting the allegation."

The public policy underlying OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly," and that "citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). In accordance with that policy, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

Your Request for Review alleges that the City Council of the City of Carbondale (Council) violated OMA during its March 12, 2019, meeting because it did not discuss an agenda item which was listed on its agenda for that meeting. The City Council has discretion to not discuss agenda items—no provision of OMA requires a public body to discuss every item listed

[REDACTED]
March 26, 2019

Page 2

on its agenda. Because the facts you have alleged do not indicate that the Council violated the requirements of OMA, this office has determined that no further action is warranted in this matter. Accordingly, this file is closed.

Please contact me at (312) 814-5201 or the Chicago address listed on the first page of this letter if you have questions.

[REDACTED]
Very truly yours, [REDACTED]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
The Honorable John "Mike" Henry
Mayor
City of Carbondale
200 South Illinois Avenue
Carbondale, Illinois 62902
mhenry@explorecarbondale.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 27, 2019

The Honorable Brian Hopkins
Alderman, 2nd Ward
City Hall Office
121 North LaSalle Street
Room 200
Chicago, Illinois 60602

The Honorable Scott Waguespack
Alderman, 32nd Ward
City Hall Office
121 North LaSalle Street
Room 300
Chicago, Illinois 60602

The Honorable Michelle A. Harris
Alderman, 8th Ward, Chicago City Council
Chairman, Committee on Committees, Rules and Ethics
City Hall Office
121 North LaSalle Street, Room 200
Chicago, Illinois 60602

RE: OMA Request for Review – 2014 PAC 31706

Dear Alderman Hopkins, Alderman Waguespack, and Alderman Harris:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). In a Request for Review received by this office on October 9, 2014, former Alderman Robert Fioretti and Alderman Scott Waguespack alleged that during its October 7, 2014, meeting, the Chicago City Council's Committee on Committees, Rules and Ethics (Committee) improperly took final action by passing out of Committee and referring to the City Council a substitute resolution (SR2014-636) approving two referendum questions that were neither listed on the meeting agenda nor related to or germane to the one referendum question that was referenced in the agenda.

Hon. Brian Hopkins
Hon. Scott Waguespack
Hon. Michelle A. Harris
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Page 2

On October 10, 2014, this office forwarded a copy of the Request for Review to the chairman of the Committee and requested copies of the October 7, 2014, meeting agenda, meeting minutes and SR2014-636, together with a written response to the allegations in the Request for Review. Counsel for the Committee furnished those materials on November 10, 2014. The Committee's written response asserted that the October 7, 2014, meeting agenda provided sufficient advance notice of the action taken on SR2014-636, but documented that—to remedy the asserted violation as a precautionary measure—the Committee reconsidered and again approved the resolution at its November 3, 2014, meeting, after posting an agenda that referenced all three referendum questions. This office forwarded copies of the Committee's response to Alderman Fioretti and Alderman Waguespack on November 13, 2014; they did not reply.

The Committee's response to this office documented that the Committee did consider and again pass all three referendum questions at its November 3, 2014, meeting after it had provided timely and sufficient notice by posting an agenda on October 30, 2014, which identified the general subject matter of all three referendum questions. Because the Committee took timely action to remedy the alleged violation, no further action by this office is required.

If you have any questions, please contact me at (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

31706 o 202 notice inf r mun



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 27, 2019

Via electronic mail

The Honorable Tim Burns
Secretary
Board of Education
Community Consolidated School District No. 59
prestmb@sbcglobal.net

Via electronic mail

Mr. Alan T. Sraga
Engler, Callaway, Baasten & Sraga, LLC
2215 York Road, Suite 515
Oak Brook, Illinois 60523
asraga@englerlawgroup.com

RE: OMA Request for Review – 2018 PAC 54031

Dear Dr. Burns and Mr. Sraga:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Community Consolidated School District No. 59 (District) Board of Education (Board) did not improperly discuss matters that were outside the scope of the exception on which it relied to close a portion of its July 9, 2018, meeting.

In his Request for Review, Dr. Tim Burns, a member of the Board, alleged that during its July 9, 2018, meeting, the Board violated OMA by discussing matters in closed session that were not encompassed by the section 2(c)(1) exception, (5 ILCS 120/2(c)(1) (West 2017 Supp.)) to the general requirement that public bodies conduct public business openly, which the Board publicly cited and identified as its basis for closing the meeting.

On July 19, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the open and closed session minutes and the closed session verbatim recording of the July 9, 2018, meeting for this office's confidential

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Mr. Alan T. Sraga
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review, together with a written response to Mr. Burns's OMA allegation. On July 27, 2018, counsel for the Board furnished those materials.¹ On July 31, 2018, this office forwarded a copy of the written response to Dr. Burns. He replied on August 9, 2018, maintaining that the closed session did not fall within the scope of the cited OMA exception.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) provides that all meetings of a public body must be open to the public unless the discussion falls within the scope of one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (5 ILCS 120/2(b) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018); *see also Henry v. Anderson*, 356 Ill. App. 3d 952, 996-997 (4th Dist. 2005) (strictly construing OMA section 2(c)(1)).

The open session minutes of the Board's July 9, 2018, meeting confirm that the Board entered closed session pursuant to section 2(c)(1) of OMA, which permits a public body to close a meeting to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body."

In his Request for Review, Dr. Burns asserted that the closed session discussion concerned probable litigation, and therefore, the Board should have relied upon section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) as its basis for entering closed session instead of section 2(c)(1) of OMA. Section 2(c)(11) applies to: "[l]itigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting." Dr. Burns argues that citing the litigation exception on the agenda not only would have been the accurate exception but also would have created more interest from the Board and caused the Board members to prepare differently for the meeting.

¹The meeting minutes were in draft form at the time of submission.

The Honorable Tim Burns
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Page 3

The Board's response to this office² asserted that the meeting was properly closed pursuant to 2(c)(1), stating:

[Dr. Burns's] claim is not supported by the closed session audio recording and is therefore erroneous. The audio recording clearly reveals that Assistant Superintendent Ludeloff presented information to the Board regarding allegations contained in a letter written by an employee's attorney related to the employee's employment, requested compensation and continued employment. The allegations included reference to the employee's reassignment for the upcoming school year * * * [and] the Board was informed during the closed session that the employee had authorized the attorney to access the employee's personnel file and related information.^[3]

Based on this office's review of the verbatim recording of the closed session portion of the Board's July 9, 2018, meeting, the Assistant Superintendent's presentation pertained to circumstances involving the employment of an individual employee. Although the presentation referenced a letter from the specific employee's attorney alleging certain statutory violations by the Board in relation to the employee's reassignment, these allegations and the other matters discussed in closed session directly related to the employment of a particular employee, which falls within the plain language of the scope of the section 2(c)(1) exception.

With respect to Dr. Burns's argument that the Board should have entered closed session under the section 2(c)(1) exception, this office notes that the litigation exception does not allow a public body to conduct deliberations on the merits of a matter under consideration because of the mere possibility that it may become a party to a judicial proceeding, "regardless of how sensitive or controversial the subject matter may be." Ill. Att'y Gen. Op. No. 83-026, at 12. Dr. Burns argues in his reply that the District's attorney demonstrated that the closed session concerned probable litigation rather than an employment matter by asking the Board members to not further discuss the issue that was discussed in closed session in order to preserve the

²The Board's response also argued that this Request for Review was procedurally incomplete because it was not signed by Dr. Burns, which is required by section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)). Section 3.5(a) of OMA provides, in pertinent part: "[t]he request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation." When a Request for Review is submitted via e-mail, this office considers the signing requirement to be fulfilled when a requester types his or her name in the closing portion of that e-mail, which Dr. Burns did in this matter. Therefore, this Request for Review is complete.

³Letter from Alan T. Srage, Engler Callaway Baasten & Srage, LLC to Shannon Barnaby, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (July 27, 2018), at 4-5.


The Honorable Tim Burns
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March 27, 2019
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confidentiality of the closed session and the attorney client privilege in the event that litigation was filed. However, at no time during the closed session was there any discussion of a threat of litigation on the part of the employee in question. In fact, the Board's response to this office stated "the letter from the employee's attorney referred to by Associate Superintendent Luedloff in the closed session did not articulate either a direct threat of litigation or a timeline for its initiation."⁴ Therefore, it appears that at the time of the Board's July 9, 2018, meeting, the Board would not have had a reasonable basis to believe that litigation by the employee was more likely than not to ensue. Even if there had been a reasonable basis for such a belief, OMA would not have required the Board to enter closed session under section 2(c)(11) instead of the section 2(c)(1) exception that authorized its limited discussion about the employment of the employee. OMA does not require a public body to cite the exception that permits the most expansive discussion of a topic provided that the public body confines its discussion to the exception under which it entered closed session.

Because the closed session directly concerned the employment of a specific employee, this office concludes that the Board's discussion was within the scope of the section 2(c)(1) exception under which it closed the meeting, and therefore, the Board's closed session discussion did not violate OMA.

The Public Access Counselor has determined that the resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me by mail at the Chicago address at the bottom of the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. This letter serves to close this file.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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⁴Letter from Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC to Shannon Barnaby, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (July 27, 2018), at 6.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 27, 2019

Via electronic mail

Via electronic mail

The Honorable Frank Haney, Chairman
Winnebago County Board
Administration Building
404 Elm Street, Room 533
Rockford, Illinois 61101
BoardOffice@WINcoIL.us

RE: OMA Request for Review – 2019 PAC 56847

Dear [REDACTED] and Mr. Haney:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Winnebago County (County) Board (Board) did not violate OMA in connection with a Board member's January 16, 2019, e-mail and letter to other Board members.

BACKGROUND

On February 14, 2019, this office received [REDACTED] Request for Review alleging that on January 16, 2019, Board member John Butitta sent an e-mail to all other members of the Board attaching a letter in which Mr. Butitta urged the other members to call for the withdrawal of a certain proposal or to reject the proposal at an upcoming Board meeting. On February 19, 2019, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to [REDACTED] allegations and requested copies of any records that documented those discussions, as well as copies of any records of communications, such as e-mails and text messages. On February 28, 2019, the Board provided the records of

[REDACTED]
The Honorable Frank Haney
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Page 2

communications. On March 8, 2019, this office forwarded the Board's cover letter to [REDACTED] in a March 11, 2019, telephone conversation with an Assistant Attorney General in this office; [REDACTED] indicated that he would not reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). In order for the requirements of OMA to apply, a gathering must constitute a "meeting" as defined by section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)):

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Under this statutory definition, a "meeting" may include communications through e-mail or other electronic means. The Board is comprised of twenty members. Accordingly, eleven Board members constitute a quorum, and a majority of the quorum is six members. Therefore, contemporaneous, interactive e-mail or other electronic communications involving at least six members of the Board which concern "public business" would ordinarily constitute a meeting of the Board which would be subject to the procedural safeguards and requirements of OMA.

OMA does not define "interactive" or "contemporaneous." In interpreting statutes such as OMA, undefined statutory terms must be afforded their "plain, ordinary, and popular meanings[.]" which may be gleaned from dictionaries. *See, e.g., Valley Forge Insurance Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 366 (2006).

"Interactive" is defined, in relevant part, as "mutually or reciprocally active."¹ This office has reviewed the e-mails the Board provided concerning Mr. Butitta's January 16, 2019, e-mail and letter. The letter contained Mr. Butitta's opinion regarding a proposed change

¹Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/interactive> (last visited March 21, 2019).

[REDACTED]
The Honorable Frank Haney


March 27, 2019

Page 3

to County ordinance provisions concerning the authority of the County administrator. The relevant communications are as follows: On January 10, 2019, Mr. Butitta sent a draft of the January 16, 2019, letter to another Board member. The Board member responded approximately ten hours later and did not include any other Board members on the e-mail. On January 16, 2019, Mr. Butitta attempted to send the message and letter at issue to the 19 other Board members and himself. It appears as though Mr. Butitta misspelled five of the Board members' e-mail addresses, but presumably the e-mail was successfully transmitted to 15 Board members. Nine minutes later, Mr. Butitta sent the same message and attachment to the same 19 Board members' e-mail addresses and himself, and copied two additional e-mail addresses for a Board member whose e-mail he had misspelled. Shortly thereafter, Mr. Butitta sent four separate e-mails attaching the letter, one to each of four of the five Board members whose e-mail addresses he had misspelled. On January 16, 2019, at 1:04 p.m., a Board member replied to Mr. Butitta's e-mail, but did not copy any other individuals. On January 16, 2019, at 3:25 p.m., a different Board member replied to Mr. Butitta's e-mail, but did not copy any other individuals. On January 18, 2019, a third Board member replied to Mr. Butitta's e-mail, but did not copy any other individuals. On January 16, 2019, one Board member forwarded Mr. Butitta's e-mail to an individual who is not on the Board. On January 18, 2019, two other Board members forwarded Mr. Butitta's message to other individuals who are not on the Board. Importantly, none of the e-mail strings provided to this office regarding the January 16, 2019, correspondence included six or more Board members engaged in interactive communications by responding to each other's e-mails.


The Board also included two e-mail strings related to Mr. Butitta's letter that originated from individuals who are not members of the Board. The first e-mail string begins with a message sent on January 19, 2019, from a non-Board member to a single Board member, who then forwards the message to three other Board members. One Board member then forwards the message to a non-Board member. There is no indication from the records provided that any Board members replied to each other. The second e-mail is from a non-Board member to seven Board members. Again, there is no indication that any Board members responded to the individual's e-mail.

In sum, none of the relevant communications that the Board provided to this office were "interactive" communications of at least a majority of a quorum of the Board. This office has not received evidence from which we could determine that such communications occurred. Accordingly, based on the available information, this office concludes that Mr. Butitta's January 16, 2019, e-mail did not elicit communications among Board members which constituted a "meeting" subject to the requirements of OMA.


The Honorable Frank Haney
March 27, 2019
Page 4

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or (217) 524-7958. This letter serves to close this file.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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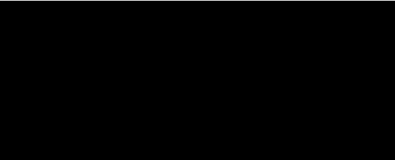


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 28, 2019

Via electronic mail



Via electronic mail

Mr. William T. Donahue
Assistant State's Attorney
Vermillion County
7 North Vermillion Street, Suite 201
Danville, Illinois 61832
bdonahue@vercounty.org

RE: OMA Request for Review – 2014 PAC 32901

Dear [REDACTED] and Mr. Donahue:

On December 24, 2014, [REDACTED] submitted a Request for Review alleging that the Vermillion County Board (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2014)) because not all of its members have taken the electronic training required by section 1.05 of OMA (5 ILCS 120/1.05 (West 2014)), and asking this office to advise the Board to halt its meetings until the members completed the OMA training. In response, the Board provided this office certificates of training for some but not all of its members and explained that the Board members are advised to take the training. Although "[t]he failure of one or more members of a public body to complete the [OMA] training * * * does not affect the validity of an action taken by the public body[.]" (5 ILCS 120/1.05(b) (West 2014)) we conclude that the Board violated the technical requirements of OMA because each of its members had not completed the required training. We remind the Board that each member of its Board and subsidiary bodies are required to complete the training not later than 90 days after taking the oath of office or assuming responsibilities as a member of a public body. 5 ILCS 120/1.05(b) (West 2014).

[REDACTED]
Mr. William T. Donahue
March 28, 2019
Page 2

Additionally, [REDACTED] also alleged that the Board's Ad-hoc Committee in Regards to the Wind Ordinance (Committee) violated OMA by failing to keep minutes of the Committee's meetings held on November 6, 2014, November 20, 2014, and December 11, 2014, and by meeting without a quorum. On January 28, 2015, the Board provided minutes for each of these Committee meetings to this office. The former Chair of the Committee, and current Board member, advised this office that the Committee no longer exists and last met several years ago.¹ Accordingly, the Public Access Bureau will take no further action regarding allegations pertaining to the Committee. *See* 5 ILCS 120/3.5(e) (West 2014)) (granting this office discretion in resolving Requests for Review).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,
[REDACTED]

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

32901 o 105 improper co

cc: *Via electronic mail*
Mr. Kevin Green
Vermilion County Board
6 North Vermilion Street
Courthouse Annex – 3rd Floor
Danville, Illinois 61832
kgreen@vercounty.org

¹E-mail from Kevin Green to Edie Steinberg [Assistant Attorney General, Public Access Bureau] (March 11, 2019).

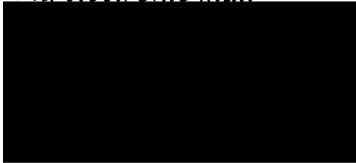


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

March 28, 2019

Via electronic mail



RE: OMA Requests for Review – 2019 PAC 57286; 2019 PAC 57287

Dear [REDACTED]

The Public Access Bureau has received your Requests for Review alleging violations of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Pleasant Plains Community Unit School District No. 8 (District) Board of Education (Board). In particular, you allege that the Board improperly discussed matters in closed session at its January 22, 2018, February 26, 2018, and April 23, 2018, meetings. After reviewing the information that you have furnished, however, this office concludes that no further action in these matters is warranted.

2019 PAC 57286

On March 15, 2019, you submitted a Request for Review to the Public Access Bureau alleging that, in a May 9, 2018, letter from its legal counsel to this office, the District "had acknowledged having discussions during executive session for which there is no documentation within the February or April executive session minutes[.]"¹ In particular, you alleged that "the Student Matters cited exception [may have been] misused to have discussions that exceeded [the] cited exception."² You asserted that your Request for Review was submitted within 60 days of the date of the discovery of the alleged violation because the Public Access Bureau did not forward you a copy of the District's May 9, 2018, "response to a Request for Review until January 31, 2019[.]"^{3 4}

¹E-mail from [REDACTED] to Public Access, Office of the Attorney General (March 15, 2019).

²E-mail from [REDACTED] to Public Access, Office of the Attorney General (March 15, 2019).

³E-mail from [REDACTED] to Public Access, Office of the Attorney General (March 15, 2019).

⁴Due to a scrivener's error, the response was not successfully transmitted to you earlier.

March 28, 2019

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Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** The request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.** The changes made by this amendatory Act of the 99th General Assembly apply to violations alleged to have occurred at meetings held on or after the effective date of this amendatory Act of the 99th General Assembly. (Emphasis added.)

This provision permits a person using reasonable diligence who discovers an alleged violation of OMA after the initial 60-day period has expired to submit a Request for Review, including a summary of facts supporting the allegation, within 60 days of the date that the violation was discovered.

Your allegation concerning the Board's February 26, 2018, and April 23, 2018, closed session meetings is vague and does not provide a summary of facts indicating the Board discussed matters outside of the exceptions cited. Further, to the extent your Request for Review refers to the counsel for the Board's statement in his May 9, 2018, letter that "the Board discussed ongoing proceedings with [REDACTED] at its February 26, 2018, meeting and discussed "matters related to [REDACTED] ongoing claims against the District"⁵ at its April 23, 2018, meeting, it appears that those discussions were related to the "student matters" exception in section 2(c)(10) of OMA⁶ (5 ILCS 120/2(c)(10) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018) that you indicated had been cited by the Board as its basis for entering the closed sessions. Accordingly, no further action with respect to this allegation is warranted.

⁵Letter from Eric L. Grenezbach, Brown, Hay & Stephens, to Laura S. Harter, Assistant Attorney General, Public Access Bureau (May 9, 2018).

⁶Section 2(c)(10) of OMA permits a public body to hold closed session discussions concerning "[t]he placement of individual students in special education programs and other matters relating to individual students." (Emphasis added.)

March 28, 2019
Page 3

2019 PAC 57287

On March 15, 2019, you submitted a separate Request for Review alleging that the Board held improper closed session discussion at its January 22, 2018, meeting. In particular, you state that, in the closed session portion of the meeting, counsel for the Board advised the Board about responding to Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) requests. You asserted that Board's discussion concerning FOIA "does not appear to be about a particular employee, student, * * * [or] in response to any claim of litigation filed with the courts[.]"⁷ You enclosed a copy of the closed session minutes of the January 22, 2018, meeting with your Request for Review, which you obtained from the District as part of its January 15, 2019, response to your January 8, 2019, FOIA request. You asserted that your Request for Review was timely filed within 60 days of the date of your discovery of the violation on January 15, 2019.

The claims in this Request for Review concern allegedly improper discussions in a closed meeting that occurred more than 60 days before you filed your Request for Review. You asserted that the alleged OMA violation was not known to you before January 15, 2019. However, the minutes of the January 22, 2018, closed meeting were made available for public inspection by the Board on or about July 23, 2018.⁸ Therefore, a person using reasonable diligence could have discovered the alleged violation within 60 days of July 23, 2018. Because you did not utilize reasonable diligence to discover the alleged violation, this office does not have authority to review the allegations.

This office will take no further action in these matters. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on this letter.


Very truly yours,

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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⁷E-mail from [REDACTED] to Public Access, Office of the Attorney General (March 15, 2019).

⁸Pleasant Plains Community Unit District No. 8 Board of Education, Meeting, July 23, 2018, Minutes 2.


March 28, 2019

Page 4

cc: *Via electronic mail*
The Honorable Gregg Humphrey, President
Board of Education
Pleasant Plains Community Unit School District No. 8
315 West Church
Pleasant Plains, Illinois 62677
ghumphrey@ppcusd8.org



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 28, 2019

Via electronic mail

P.O. Box 516

RE: OMA Request for Review – 2019 PAC 57342

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that it is precluded from reviewing this matter because you submitted your Request for Review after the statutory period for doing so expired.

On March 20, 2019, this office received your Request for Review alleging that the Pecatonica Township Board of Trustees (Board) discussed matters in closed session during its March 20, 2018, meeting that fell outside the scope of section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018).¹ You stated that the Board voted during its March 19, 2019, meeting to continue keeping the closed session minutes of the March 20, 2018, meeting confidential. You provided this office with a timeline of Board meetings you believe to be relevant and highlighted certain parts of those meetings pertaining to the Board's consideration of a resolution to evict the multi-township assessor from the Township Hall; you also provided copies of certain agendas and minutes. You contended:

¹Section 2(c)(11) permits a public body to close a portion of a meeting to discuss:

Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

March 28, 2019

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As there are very specific reasons for entering into a closed meeting, and after hearing the comments made in open meeting during the March 19, 2019 regular board meeting, I feel the board is now and possibly has been from the initial March 20, 2018 closed meeting, in violation of the Open Meeting Act in regards to closed meetings.^[2]

The information you provided regarding the comments made during the March 19, 2019, meeting is that Township Supervisor Joe Musso allegedly said: "I will tell you as long as that person is still capable of gettin' after us I would like to leave them closed. I don't want a lawsuit."³

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later than 60 days after the alleged violation**. If facts concerning the violation are not discovered within the 60-day period, but are **discovered at a later date**, not exceeding 2 years after the alleged violation, **by a person utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation occurred, unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. In that case, the Request for Review must be submitted within 60 days after discovery of the alleged violation.

This office has reviewed the materials you provided. The March 20, 2018, minutes document that you were in attendance.⁴ Your Request for Review stated that during the meeting, both before and after the closed session, the Board's attorney informed the public that

²Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau (March 20, 2019).

³Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau (March 20, 2019).

⁴Pecatonica Township Board, Meeting, March 20, 2018, Minutes I.

March 28, 2019

Page 3

the closed session discussion concerned evicting the multi-township assessor from the Township Hall. Given that you also stated that a member of the public protested the Board's adjournment to closed session and was arrested and removed from the meeting when he continued to argue that the Board did not have a legitimate basis for entering closed session, it appears that you would have been aware of facts concerning the alleged violation at that time. Your timeline also appears to indicate that on October 16, 2018, the Township Supervisor acknowledged that no lawsuit had been filed in connection with the subject of the closed session discussion. To the extent that the absence of a lawsuit months several months after the meeting could be considered facts supporting the allegation that the closed session discussion was not authorized by section 2(c)(11), the information you provided indicates that you were aware of those facts more than 60 days before you filed your Request for Review. Supervisor Musso's alleged remarks during the Board's March 19, 2019, meeting about wanting to keep the March 20, 2018, minutes confidential to avoid a lawsuit do not provide newly discovered facts supporting the allegation that the Board held an improper closed session discussion.

Because you submitted your Request for Review more than 60 days after discovering the facts that could potentially support the allegation that the Board violated OMA, this office is precluded from taking further action in this matter.⁵ This file is closed. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

TERESA LIM
Assistant Attorney General
Public Access Bureau

57342 o 60 days mun

cc: *Via electronic mail*
The Honorable Joe Musso
Supervisor
Pecatonica Township
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com

⁵Although you also appear to argue that it is improper for Supervisor Musso to omit closed sessions from the Board's meeting agendas, section 2a of OMA (5 ILCS 120/2a (West 2016)) provides, in relevant part: "At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act." Accordingly, a public body may, but is not required to, list closed sessions on its meeting agendas.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 2, 2019

Via electronic mail



Via electronic mail

Mr. John Savage
President, Board of Library Trustees
Aurora Public Library
101 South River Street
Aurora, Illinois 60506
board@aurorapubliclibrary.org

RE: OMA Request for Review – 2018 PAC 55687

Dear [REDACTED] and Mr. Savage:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that most of the closed session discussions held by the Board of Library Trustees (Board) of the Aurora Public Library (Library) on January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018, were permitted by exceptions in OMA to the general requirement that public bodies conduct business openly. However, this office further concludes that discrete portions of the discussions were not authorized by the exceptions under which the Board entered closed session.

On November 13, 2018, [REDACTED] submitted the above-captioned Request for Review alleging that on October 16, 2018, the president of the Board participated in a press conference with the mayor of Aurora and the superintendent of West Aurora School District 129 (District) during which the Board president stated that during 2018 the Board had held closed session discussions about possibly moving the Library's West Branch. [REDACTED] alleged that OMA does not contain an exception permitting closed session discussions about the possibility

██████████
Mr. John Savage
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Page 2

of such a move. On November 20, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide copies of the closed session minutes (in draft form if necessary) and verbatim recordings from the Board's closed session meetings held on March 28, 2018, July 25, 2018, and August 29, 2018, along with the records from any other meetings held in 2018 during which the Board discussed issues related to the possible relocation of the West Branch. This office also asked the Board to identify the closed session exception or exceptions that permitted those discussions, together with a written response to ██████████ allegations.

On November 30, 2018, the Board provided this office with those materials and a written response in which it acknowledged that it discussed the possible relocation of the West Branch during the closed sessions of four meetings held in 2018, but argued that each of those discussions fell within the scope of either section 2(c)(5) or 2(c)(6) of OMA (5 ILCS 120/2(c)(5), (c)(6) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). The Board furnished this office with a written response to the Request for Review, along with a redacted version of its response suitable for disclosure to ██████████.¹ On December 4, 2018, this office sent a copy of the Board's response to ██████████. He replied on December 9, 2018.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Time Limits for Requests for Review

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made

¹5 ILCS 120/3.5(c) (West 2016) ("[T]he public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

██████████
Mr. John Savage
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within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation. (Emphasis added.)

In his Request for Review, ██████████ stated that the Board had not discussed the possibility of relocating the West Branch during open session at any of its meetings held during 2018, and had denied that there were plans in place to do so. Thus, the alleged violations were not discovered until the October 16, 2018, press conference. Although each of the Board's 2018 closed session meetings during which it acknowledges discussing this issue were held more than 60 days before ██████████ submitted his Request for Review on November 13, 2018, it appears that he could not have learned material facts concerning the alleged violations at the time that they occurred, despite using reasonable diligence, because the possible violations occurred during closed sessions. ██████████ submitted this Request for Review to this office on November 13, 2018, which was within 60 days after the discovery of the alleged violations on October 16, 2018. Accordingly, this Request for Review was filed within the time limits set out in section 3.5(a) of OMA, and this office has authority to review ██████████ allegations.

Closed Sessions

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA. The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018.

The Board's response to this office explains that it held four closed session discussions "to evaluate options to possibly relocate the West Branch and to [sell] or lease the building owned by the Library which currently houses the West Branch."² Those closed session meetings occurred on January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018. On January 24, 2018, the Board entered closed session pursuant to section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018),³ and on the other three dates, it entered closed session pursuant to sections 2(c)(5),

²Letter from John Savage, President, Board of Library Trustees, Aurora Public Library, to Leah Bartelt, Assistant Attorney General, Office of the Illinois Attorney General, Public Access Bureau (November 30, 2018), at 2.

³Board of Library Directors, Aurora (Illinois) Public Library, Meeting, January 24, 2018, Minutes

2(c)(6), and 2(c)(21) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018).⁴ The Board argues that all discussions it held during those meetings relating to the potential move of the West Branch and were authorized by sections 2(c)(5) and 2(c)(6).⁵

Sections 2(c)(5) and 2(c)(6) of OMA allow public bodies to enter into closed session to consider:

- (5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.
- (6) The setting of a price for sale or lease of property owned by the public body.

The Illinois Appellate Court addressed the scope of section 2(c)(5) of OMA in *Galena Gazette Publications Inc., v. County of Jo Daviess*, 375 Ill. App. 3d 338 (2d Dist. 2007), in which the public body held a closed session meeting held to discuss the possibility of leasing a specific property for its use. There, the plaintiff conceded that the public body could permissibly discuss the material terms of the lease in closed session, but argued that the scope of section 2(c)(5) did not extend to "peripheral matters" that were raised, such as how the public body would utilize the leased space. *Galena Gazette*, 375 Ill. App. 3d at 344. The court disagreed, finding that nothing in the language of section 2(c)(5) distinguishes "material" matters from peripheral ones. *Galena Gazette*, 375 Ill. App. 3d at 344. The court added that it would be impractical for the public body to have a meaningful discussion of the lease terms if it was precluded from discussing related details needed to put the terms in context. *Galena Gazette*, 375 Ill. App. 3d at 345. Because the public body's closed session discussion centered on considerations involving the potential lease, the court held that the discussion was proper under section 2(c)(5). *Galena Gazette*, 375 Ill. App. 3d at 346.

In contrast, the scope of section 2(c)(6) limits a public body to discussing "[t]he **setting of a price** for sale or lease" of property that it owns. (Emphasis added.) Unlike section 2(c)(5), the clear and unambiguous language of section 2(c)(6), which must be strictly construed, does not allow a public body to discuss the sale or lease of its property in closed session other

⁴Board of Library Directors, Aurora (Illinois) Public Library, Meeting, March 28, 2018, Minutes 5; Board of Library Directors, Aurora (Illinois) Public Library, Meeting, July 25, 2018, Minutes 5-6; Board of Library Directors, Aurora (Illinois) Public Library, Meeting, August 29, 2018, Minutes 5.

⁵Section 2(c)(21) of OMA permits closed session discussion of the minutes of meetings lawfully closed under OMA. At the three meetings at which it cited this exception, the Board held a short discussion that was authorized by this exception in addition to discussing the possibility of relocating the Library's West Branch.


██████████
Mr. John Savage
April 2, 2019
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than to set a price. While section 2(c)(5) of OMA allows general closed session discussions concerning the purchase or lease of real property for the use of the public body, neither it, nor section 2(c)(6), authorizes general discussions regarding the sale or lease of its existing public property. See Ill. Att'y Gen. Pub. Acc. Op. No. 15-003, issued March 19, 2015, at 5 (Section 2(c)(6) of OMA does "not extend to the discussion of general issues concerning the disposal of publicly-owned property.").

In his reply, ██████████ noted that the minutes from the Board's January 24, 2018, closed session, which the Board recently made available to the public, fail to identify any particular property that was discussed at the meeting, and fail to show that a proposed lease or contract for purchase was presented to the Board. ██████████ further states that the Library is restricted from selling the West Branch without prior notice according to the terms of an intergovernmental agreement between the Library and the District. Therefore, he asserts, the Board cannot discuss the setting of a price for the sale or lease of the West Branch prior to deciding to terminate the intergovernmental agreement with the District, and closed session deliberation about the termination of that agreement would be outside the scope of the cited exemptions.

Based on this office's confidential review of the closed session recordings of each of the four meetings, the Board held lengthy discussions concerning the potential purchase or lease of real property for the use of the public body, including discussions as to whether specific parcels should be acquired or leased. These discussions were permissible under section 2(c)(5) of OMA. ██████████ argues that the information provided in the minutes of the Board's January 24, 2018, closed session and in response to a FOIA request he submitted indicated that the Board was not considering a specific lease or sale agreement during that meeting. However, nothing in the language of section 2(c)(5) limits a public body from discussing a potential purchase or lease of property if the public body has not presented its members with proposed terms for an agreement. Our review of the four closed session recordings indicates that a significant portion of each meeting was devoted to discussing specific parcels of property for use by the Library, including the pros and cons of different parcels, the Library's anticipated uses of those parcels, and the financial terms of the transactions under consideration.

Additionally, our confidential review of the recordings from the March, July, and August closed sessions indicates that the Board also discussed at those meetings the setting of a price for sale or lease of the building owned by the Library which currently houses the West Branch. These discussions were permissible under section 2(c)(6). Although ██████████ argues that the intergovernmental agreement between the Library and District restricts the Library's ability to sell or lease the West Branch property, the recordings of the closed session meeting do not document a deliberation over the possible termination of the intergovernmental agreement. Further, section 2(c)(6) does not require such an agreement to be terminated before a public body


Mr. John Savage
April 2, 2019
Page 6

can enter closed session to discuss the setting of a price for sale or lease of property that the public body owns.


However, our review indicated that, for short portions of each of the four meetings at issue, the Board held discrete discussions concerning the property currently housing the West Branch that were not limited to the setting of a price for that property, along with some other matters related to the West Branch. We have thoroughly reviewed the arguments presented by the Board in the confidential portions of its written response to the Request for Review, and disagree that the entireties of the closed session discussions during these four meetings concerning the West Branch were authorized by either section 2(c)(5) or section 2(c)(6). Based on the timers on the copies of the recordings provided to this office, the unauthorized discussions occurred at:

- January 24, 2018, meeting: 3:16-4:32 and 6:57-8:54;
- March 28, 2018, meeting: 17:54-18:30, 20:03-22:10, 23:34-24:13, and 25:36-26:39;
- July 25, 2018, meeting: 6:03-7:31, 13:20-14:44, and 20:11-20:38;
- August 29, 2018, meeting: 16:15-17:25, 19:45-22:54, and 25:44-25:53.

Accordingly, this office concludes that the Board violated OMA by discussing certain unauthorized topics in closed session during its January 24, 2018, March 28, 2018, July 25, 2018, and August 29, 2018, meetings. To remedy these violations, this office asks that the Board vote to release to the public the limited portions of these closed session recordings as listed above. The remainder of the recordings may remain confidential unless the Board determines that the need for confidentiality no longer exists.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,


LEAH BARTELT
Assistant Attorney General
Public Access Bureau



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 5, 2019

Via electronic mail

The Honorable Kathleen Carson
Commissioner
Oak Brook Park Board of Commissioners
1450 Forest Gate Road
Oak Brook, Illinois 60523
kcarson@obparks.org

RE: OMA Requests for Review – 2013 PAC 23308; 2013 PAC 24022

Dear Ms. Carson:

The Public Access Bureau received the above captioned Requests for Review from [REDACTED] alleging the Oak Brook Park District Board of Commissioners (Board) violated the Open Meetings Act (OMA) at its December 17, 2012, and February 18, 2013, regular meetings. On March 5, 2019, this office sent [REDACTED] an e-mail to determine his continued interest in these matters. Because this office has not heard from [REDACTED] these matters are now closed.

Accordingly, this letter serves to close these matters. If you have questions, please contact me at (217) 782-1699 or ldraws@atg.state.il.us.

Very truly yours,

[REDACTED]

LEO DRAWS
Assistant Attorney General
Public Access Bureau

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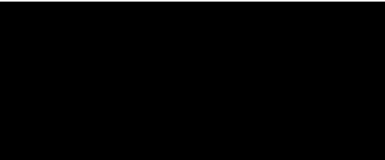


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 5, 2019

Via electronic mail



Via electronic mail
The Honorable Don Rage
President, Board of Trustees
Rutland-Dundee Fire Protection District
11 East Higgins Road
Gilberts, Illinois 60136
drage@rdfpd.org

Via electronic mail
Mr. Bernard K. Weiler
Attorney for Rutland-Dundee Fire Protection District
Mickey, Wilson, Weiler, Renzi & Andersson, P.C.
140 South Municipal Drive
Sugar Grove, Illinois 60554
bkw@mickeywilson.com

RE: OMA Request for Review – 2019 PAC 56805

Dear [REDACTED] Mr. Rage, and Mr. Weiler:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Trustees (Board) of the Rutland-Dundee Fire Protection District (District) did not provide proper notice on the agenda for its January 14, 2019, meeting of its vote on a resolution to place a referendum question on the ballot for the April 2, 2019, election.

[REDACTED]
The Honorable Don Rage
Mr. Bernard K. Weiler
April 5, 2019
Page 2

BACKGROUND

On February 11, 2019, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board potentially violated OMA during its January 14, 2019, meeting by voting to place a referendum question on the ballot for the upcoming April 2, 2019, election without having listed that topic on the meeting's agenda. Specifically, he asserted:

The minutes state that the trustee asked the Attorney about the possibility of placing a non bi[n]ding referendum question on the ballot and the next line of the minutes had a trustee making a motion on a lengthy question that absolutely had to be pre-determined. This was the last night that a referendum question could be submitted to the County and it was filed shortly after.^[1]


He contended that the referendum question "was never disclosed to the Public, never listed as an Agenda item[.]"² This office construed [REDACTED] claim as alleging a violation of section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)).

On February 19, 2019, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its January 14, 2019, meeting agenda and minutes, together with a written response to [REDACTED] OMA allegation. In particular, this office asked the Board to address whether its vote on placing the referendum question on the ballot qualified as final action. On February 21, 2019, [REDACTED] sent this office an e-mail supplementing his Request for Review by stating that a named member of the audience had voiced an objection during the meeting to the lack of advance notice for the referendum question vote.³ On February 28, 2019, this office received a written response from the Board and meeting materials for this office's review. On March 5, 2019, this office forwarded a copy of the Board's response to [REDACTED] he replied that same day. On April 3, 2019, [REDACTED] informed this office that the three challengers for the three Board positions had won the election and that the

¹E-mail from [REDACTED] to Sarah [Pratt] (February 11, 2019).

²E-mail from [REDACTED] to Sarah [Pratt] (February 11, 2019).

³This office notes that although [REDACTED] questioned whether this individual's comment should have been included in the meeting minutes, the Public Access Bureau has determined that OMA generally does not require public comments to be documented in meeting minutes. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 36909, issued September 2, 2015, at 2 (noting that section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2016)) requires minutes to include "a summary of discussion on all matters proposed, deliberated, or decided" by the public body, rather than brief discussions initiated by a member of the public that do not rise to the level of deliberation).


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Mr. Bernard K. Weiler
April 5, 2019
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referendum question had been rejected by the voters, but that he still sought a determination from this office to provide guidance.

DETERMINATION


"It is the public policy of this State that * * * the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.02(c) of OMA provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not contain a definition of "general subject matter." However, the Senate debate on House Bill No. 4687, which, as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide general notice of all matters upon which a public body would be taking final action:

[T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a *
* **general notice** if you're going to have and take final action, as
to **generally what's going to be discussed so that – that people
who follow their units of local government know what they're
going to be acting upon.** (Emphasis added.) Remarks of Sen.
Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at
47.

The Public Access Bureau has determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (determining that voting to sign a new city administrator to a five year contract under the agenda item "Appointment of the City Administrator" did not violate section 2.02(c) of OMA).

The term "final action" generally does not encompass intermediate steps taken by a public body. *Gosnell*, 179 Ill. App. 3d at 176 (concluding that a board's decision to authorize a request for mediation as an alternative to the negotiations it had been conducting with a union


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was merely a step towards reaching final action on the union's contract, rather than final action itself). "Final action" generally must resolve a distinct matter. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 (council's vote directing staff to explore funding for a sporting event and report back with a recommendation only constituted a step in furtherance of reaching action rather than final action itself), *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 28933, issued March 6, 2018, at 3 (board took final action when it voted to extend superintendent's contract even though financial terms of contract were to be approved at a subsequent meeting).

In its response to this office, the Board asserted that "[a]n agenda item relating to the Certification of Ballots appeared under Item 8A of the agenda" and that "Item 9C was an item pertaining to a Joint Fire Management Services Concept."⁴ With regard to the first item, the Board contended:

Upon discussion of Item 8A, it was proposed that the Certification of the Ballots include a non-binding public question designed to gauge the public's interest in pursuing efficiencies and economies through the consolidation of services with an adjoining governmental entity. A motion was then made to place a public question to that effect on the ballot that was to be certified for the upcoming April 2019 election, along with the certification of candidates.^[5]

The Board further contended that "[t]he Joint Management Services Concept is a matter which the Board of Trustees was considering in an effort to consolidate services and the Board wished to have a broader base of public opinion with regard to such consolidation efforts."⁶ Additionally, the Board argued that the resolution that it approved did not constitute "a final action of the Board of Trustees to which the unit of government or its constituents would be

⁴Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁵Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁶Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

[REDACTED]
The Honorable Don Rage
Mr. Bernard K. Weiler
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bound."⁷ According to the Board, "the election law requires the adoption of a resolution" to place a public question on the ballot.⁸

In reply to that answer, [REDACTED] disputed the Board's claim that Agenda Item 9C indicated that the Board might place a referendum question on the April 2019 ballot and maintained that the Board took final action when it voted to place the referendum question on the ballot.

The relevant portion of the minutes provides:

Trustee Rage questioned Attorney Weiler about the possibility of putting a non-binding referendum question on the ballot regarding the efforts to consolidate fire services with other area fire departments/fire districts. Discussion was conducted regarding the matter.


A motion was made by Trustee Kilian to approve Resolution 2018-003, A Resolution to Place Public Question on the Ballot for the April 2, 2019 Consolidated Election as presented, with the following question:

"Shall the Rutland-Dundee Townships Fire Protection District proceed with efforts to effect the consolidation of fire and emergency medical services with the Village of West Dundee, and/or the Village of West Dundee and/or the East Dundee and Countryside Fire Protection District, and/or the Village of Carpentersville to maximize efficiency and reduce expenses."⁹

⁷Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁸Letter from Bernard K. Weiler, Mickey, Wilson, Weiler, Renzi & Andersson, P.C., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (February 28, 2019).

⁹Rutland-Dundee Fire Protection District Board of Trustees, Meeting, January 14, 2019, Minutes 2-3.


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The Board then passed the resolution, which provides, in pertinent part:

NOW, THEREFORE, Be It Resolved that the following public question be placed on the ballot for the April 2, 2019 consolidated election to be voted on by the voters of the Rutland-Dundee Townships Fire Protection District:


"Shall the Rutland-Dundee Townships Fire Protection District proceed with efforts to effect the consolidation of fire and emergency medical services with the Village of West Dundee, and/or the Village of West Dundee and/or the East Dundee and Countryside Fire Protection District, and/or the Village of Carpentersville to maximize efficiency and reduce expenses."

BE IT FU[R]THER RESOLVED, that the Secretary of the Board of Trustees, acting as the local election authority take all actions necessary to certify the foregoing public question to be placed upon the ballot for the April 2, 2019 Consolidated Election.

This Resolution shall be in full force and effect upon its passage and approval as required by law.¹⁰

The resolution, which was signed and dated January 14, 2019, contains specific recitals and affirmative language signaling the formality of the Board's action. Although the resolution did not resolve the consolidation issue, the vote on the resolution was a distinct final action that disposed of the matter of officially placing a referendum question before voters of the District. The non-binding nature of the public question does not exclude the Board's vote from the requirements of section 2.02(c) of OMA. Article 28 of the Election Code (10 ILCS 5/28-1 *et seq.* (West 2016)) provides specific procedures for submitting public questions—both those with legal effect and advisory questions of public policy—to referenda. As the Board noted, those procedures provide for the governing body of a unit of local government to pass a resolution to place a public question on a ballot. *See* 10 ILCS 5/28-7 (West 2016). This formal requirement for submitting a public question to referendum distinguishes the Board's vote from an optional, intermediate step in furtherance of final action that is not necessitated by a statutory provision mandating the approval of a resolution.


¹⁰Resolution No. FY2018-003, A Resolution to Place Public Question on the Ballot for the April 2, 2019 Consolidated [sic] Election (January 14, 2019).


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April 5, 2019
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The plain language of section 2.02(c) requires a public body to include the general subject matter of such a resolution on the meeting agenda before taking final action. This office's review confirmed that no items set forth the general subject matter of submitting the public question to referendum. Agenda item 8A, "Certification of Ballot – Secretary Prusko," indicated that the Board planned to certify the ballot; it did not suggest that any public questions might be placed on that ballot.¹¹ While agenda item 9C, "Joint Fire Management Services Concept," indicated that the Board might discuss the subject of consolidation, it likewise did not reference any public questions.¹² The agenda did not reflect a connection between items 9C and 8A in a manner that could have conveyed to members of the public that a public question about consolidation would be subject to a vote during the meeting. Therefore, this office concludes that the Board did not provide proper advance notice under section 2.02(c) of OMA of its vote to adopt the resolution during its January 14, 2019, meeting. At this time, no corrective action can be taken to remedy this violation. However, this office advises the incoming Board that the agendas for its future meetings must identify the general subject matters of all items upon which the Board wishes to take final action.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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¹¹Rutland-Dundee Fire Protection District Board of Trustees, Agenda Item 8A. Certification of Ballot – Secretary Prusko (January 14, 2019).

¹²Rutland-Dundee Fire Protection District Board of Trustees, Agenda Item 9C. Joint Fire Management Services Concept (January 14, 2019).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 8, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57439


Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/ 3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received by this office on March 26, 2019, you alleged that the West Park Career Academy's Local School Council (Council) does not provide accurate and complete English translation of public comments that are made in Spanish during Council meetings. You requested that the Council provide transparent translation of speakers' comments made during the period designated for public participation.

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)). See 15 ILCS 205/7(c)(3) (West 2016). Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation."


Neither FOIA nor OMA contain provisions governing a public body's translation of comments made by members of the public during open meetings. Section 2.06(g) of OMA (5 ILCS 120/ 2.06(g) (West 2016)) addresses the requirements for public comment. It provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules, or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules but those rules


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unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7. You have not alleged that anyone has been denied the opportunity to speak at a Council meeting. Because OMA does not set forth any requirements concerning the translation of public comments, this office is unable to review your allegation of inadequate translation during the public comment periods of Council meetings.

For the foregoing reasons, this file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or at (217) 524-7958.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

57439 o no fi war sd

cc: Ms. Yarimar Nieves
Chairperson
Local School Council
West Park Career Academy
1425 North Tripp Avenue
Chicago, Illinois 60651



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 8, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57509

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted on this matter.

On April 1, 2019, you submitted this Request for Review alleging that the City of Waukegan's (City's) City Council (City Council) and the City's Mayor violated OMA. Specifically, your Request for Review states that an event was held at City Hall on January 28, 2019, to honor the City's outstanding students. You allege that improper electioneering occurred at this event when the mayor permitted a named person to post a campaign sign near the mayor's office advertising the named person's candidacy for a position on the City's Board of Education.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation.**" (Emphasis added.)

OMA is intended to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). No portion of OMA, however, governs the regulation of campaign signs. Therefore, your allegation that the City Council, or the Mayor, may have impermissibly permitted the posting of a campaign sign on public property does not provide a summary of facts supporting the allegation that the City

[REDACTED]
April 8, 2019

Page 2

Council, or Mayor, violated OMA.¹

Please note, the Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)) and OMA. 15 ILCS 205/7(c) (West 2016). To the extent that your Request for Review could be construed as alleging violations of State laws other than FOIA or OMA, the Public Access Counselor does not have authority to review those alleged violations.

Accordingly, this office has determined that no further action is warranted on this matter. If you have any questions, you may contact me by mail at the Chicago address at the bottom of the first page of this letter. This letter serves to close this matter.

Very truly yours,


[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

57509 o no fi war mun

¹Further, even if this office had the authority to review your allegations, your Request for Review was untimely. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

You submitted your Request for Review more than 60 days after the date of the alleged violation, and you have not asserted or provided any facts indicating that you did not discover the alleged violation before the 60-day period expired despite using reasonable diligence. Because you did not submit your Request for Review before the statutory period for doing so expired, this office lacks authority to review your allegations concerning the January 28, 2019, meeting.


April 8, 2019

Page 3

cc: *Via electronic mail*
The Honorable Sam Cunningham
Mayor
City of Waukegan
100 North Martin Luther King Jr. Avenue
Waukegan, Illinois 60085
mayor.cunningham@waukeganil.gov



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 9, 2019

Via electronic mail

RE: OMA Request for Review – 2019 PAC 57114


Dear [REDACTED]

This determination letter is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/ 3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted as to this matter.

On March 5, 2019, you submitted this Request for Review alleging that the Waukegan City Council (City Council) violated OMA in connection with its March 4, 2019, meeting. Specifically, you alleged that the Mayor sought to limit your right to public comment by various means, including interrupting you during your three-minute time limit.

Section 2.06(g) of OMA (5 ILCS 120/ 2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Public Access Bureau has previously determined that, in order to warrant further action by this office, a Request for Review concerning public comment must set forth facts indicating that a member of the public attempted to address public officials during an open meeting but was improperly restricted from appropriately doing so. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2 (determining that a Request for Review alleging that a board's public comment rules violated section 2.06(g) of OMA did not warrant further inquiry because the Request for Review did not allege that anyone who attempted to address the board was improperly denied an opportunity to speak).*

Your Request for Review outlined numerous concerns with the City Council and Mayor with respect to public comment; however, you have not alleged that you or any other individual attempted to speak at the meeting but was denied an opportunity to address the City



April 9, 2019

Page 2

Council. This office has reviewed an online video¹ of the meeting in question, together with the City Council's rules governing public comment. Those rules specifically state that the presiding officer of the City Council may rule any individual addressing the City Council out of order for exceeding the three-minute limitation or engaging in electioneering.² This office's review of the online video demonstrated that you were afforded three minutes for public comment, as outlined in the City Council's rules for public comment. Although the Mayor did interrupt you due to alleged electioneering, your time for public comment was paused during those interruptions, and the Mayor eventually permitted you to make specific comments about candidates without further interruption. Because you were afforded three minutes to speak on the topic you wished to address, we are unable to conclude that the Council violated section 2.06(g) of OMA during its March 4, 2019, meeting. Accordingly, we have determined that no further action is warranted as to this matter. Please note, however, that this office will address in 2019 PAC 56926 whether the Board violated section 2.06(g) by restricting you from speaking at its February 4, 2019, and February 19, 2019, meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-1699, ldraws@atg.state.il.us, or the Springfield address listed on the first page of this letter.

Very truly yours,


LEO DRAWS
Assistant Attorney General
Public Access Bureau

57114 o no fi war mun

cc: *Via electronic mail*
The Honorable Janet E. Kilkelly
Clerk, City of Waukegan
100 North Martin Luther King Jr. Avenue
Waukegan, Illinois 60085
cityclerk@waukeganil.gov

¹WaukeganTV, YouTube (March 8, 2019), <https://www.youtube.com/watch?v=-Ebf7azpWD0>.

²WAUKEGAN, ILL., CODE art. 2, div. 2, § 2-65.1 (2007).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 10, 2019

Via electronic mail

Via electronic mail

Mr. Scott F. Uhler
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Chicago, Illinois 60606
sfuhler@ktjlaw.com

RE: OMA Request for Review – 2019 PAC 57193

Dear [REDACTED] and Mr. Uhler:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, the Public Access Bureau is unable to conclude that the Village of Lake Zurich (Village) Board of Trustees (Board) violated OMA.

On March 9, 2019, [REDACTED] submitted a Request for Review that alleged that members of the Board held private meetings where public business was discussed. In particular, [REDACTED] alleged that Trustee Mary Beth Euker stated in a video posted on Facebook on March 5, 2019, that Board members have debates and discussion on topics before meetings.

On March 15, 2019, this office sent a copy of the Request for Review to the Board and asked it to respond to [REDACTED] allegations by clarifying whether a majority of a quorum of the members of the Board privately gathered to discuss the public business of the Village. On March 19, 2019, counsel for the Board provided a written answer. On March 20, 2019, this office sent a copy of the Board's answer to [REDACTED] she did not reply.

Undisclosed Meetings Allegation

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016), as amended by Public Act 100-646, effective July 31, 2018) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 (5 ILCS 120/1.02 (West 2016)) defines a "public meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

In its March 19, 2019, response to this office, the Board asserted that a majority of a quorum of its members has not gathered discuss the public business of the Village outside of its public meetings. The Board explained that Trustee Euker's comments in the Facebook video¹ reflected her belief "that the Village Trustees take their responsibilities seriously by seeking out, studying and considering a good deal of information from available, relevant sources about Village operations, outside the formal context of the meetings of the Board of Trustees."² According to the Board, its members regularly contact Village employees to inform themselves

¹In the relevant portion of the video posted on Facebook, Trustee Euker stated:

All three present trustees, Shaw, Spacone, and Sprawka, read actively a lot of material in the weeks before each meeting. And, in fact, the meeting is there for [the] public purpose of seeing us vote on issues. All of the discourse and, uh, debate that occurs happens in the weeks before the meeting – they do extra research, they contact people in the Village, and they also contact Village staff to learn more before they decide on issues. They are willing to put in the work. Claiming that we rubber stamp everything is simply untrue. Thoughtful discussion takes place before every single meeting in a variety of formats, and it takes place in a collaborative, polite way even if we are debating one another. Trustee Mary Beth Euker, FACEBOOK (March 5, 2019, 2:26 PM), https://m.facebook.com/story.php?story_fbid=2257122967877815&id=1882617031995079&sfnsn=xmmo.

²Letter from Scott F. Uhler, Klein, Thorpe & Jenkins, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (March 19, 2019), at 2.

[REDACTED]
Mr. Scott F. Uhler

April 10, 2019

Page 3

about Village business, but that does "not include * * * any discussion by or between members of the Board of Trustees outside the context of the Village Board meetings."³

The available information does not indicate that a majority of a quorum of Board members held an interactive discussion with each other concerning Village business. [REDACTED] allegation that, in a video posted on Facebook, Trustee Euker stated that Board members have "thoughtful discussion" before meetings on topics related to Village business does not provide facts supporting the allegation that a majority of a quorum of members of the Board held private discussions that constitute a "meeting" as that term is defined by OMA. Accordingly, this office is unable to conclude that the Board violated section 2(a) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the first page of this letter.

Very truly yours

[REDACTED]
MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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³Letter from Scott F. Uhler, Klein, Thorpe & Jenkins, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (March 19, 2019), at 2.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

April 11, 2019

Via electronic mail

Mr. William Thompson
President, Western Illinois University Chapter
University Professionals of Illinois
P.O. Box 414
Macomb, Illinois 61455
wat100.thompson@gmail.com

Via electronic mail

Mr. Richard G. Egger, Jr.
News Director
Tri-States Public Radio
1 University Circle
Macomb, Illinois 61455
rg-egger@wiu.edu

Via electronic mail

Ms. Elizabeth Duvall
General Counsel
Western Illinois University
1 University Circle
Macomb, Illinois 61455
el-duvall@wiu.edu

RE: OMA Requests for Review – 2018 PAC 55642, 2018 PAC 55739

Dear Mr. Thompson, Mr. Egger and Ms. Duvall:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that, during the closed session portion of its July 12, 2018 meeting, the Board of Trustees (Board) of Western Illinois University (University) improperly discussed certain

Mr. William Thompson
Mr. Richard G. Egger, Jr.
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matters which were outside the scope of the exceptions to the general requirement that public bodies conduct business openly.

BACKGROUND

2018 PAC 55642

On November 7, 2018, this office received a Request for Review (2018 PAC 55642) from Mr. William Thompson, on behalf of the Western Illinois University Chapter of the University Professionals of Illinois, alleging improper closed session discussions by the Board during its July 12, 2018, meeting. Specifically, Mr. Thompson stated that he had recently listened to the recording of portions of the closed session meeting held by the Board on June 28, 2018, and reported that the University's Senior Vice President discussed with the Board's Chair the possibility of discussing program reductions in the closed session of the Board's next meeting. Mr. Thompson alleged that if a discussion of program reductions being made for either budgetary or curriculum reasons had occurred, that discussion would not be authorized under the closed sessions exceptions described in section 2(c) of the Open Meetings Act (5 ILCS 120/2(c) (West 2017 Supp.)).

Mr. Thompson stated that his Request for Review was timely filed, despite being submitted more than 60 days after the date of the alleged violation, because he only discovered the violation after the release of the closed session recording, which the Board had previously maintained as confidential.¹ This office concludes that because these alleged violations occurred in closed session, they could not have been discovered within 60 days by a person using reasonable diligence. Mr. Thompson discovered the alleged violations within two years of the meeting, and filed this Request for Review within 60 days of that discovery. Therefore, this Request for Review was filed within the statutory time limitation. *See* 5 ILCS 120/3.5(a) (West 2016).

On November 19, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the closed session minutes and closed session verbatim recording of the July 12, 2018, meeting for this office's review, together with a written response to Mr. Thompson's allegations.

¹The Board made the recording of portions of its June 28, 2018, closed session meeting available to Mr. Thompson on November 5, 2018, in compliance with the Attorney General's Binding Opinion 18-012, which determined that portions of the Board's discussion at that meeting were not permitted by the closed session exceptions to the Open Meetings Act. Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018.

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Mr. Richard G. Egger, Jr.
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April 11, 2019
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2018 PAC 55739

On November 15, 2018, this office received a Request for Review (2018 PAC 55739) from Mr. Rich Egger, on behalf of Tri-States Public Radio, alleging that the Board may have improperly discussed matters during closed sessions of meetings held in 2017 and 2018. Mr. Egger also referenced the statements made during the June 28, 2018, closed session concerning the possibility of discussing program reductions at the next meeting.²

On November 27, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda, open and closed session minutes, and closed session verbatim recording from the July 12, 2018, meeting for this office's review, together with a written response to Mr. Egger's allegations.

On December 7, 2018, with the permission of this office, the Board addressed both Requests for Review by furnishing a single written response asserting that all discussions held during the July 12, 2018, closed session were authorized by either section 2(c)(1) or 2(c)(2) of OMA. The Board provided this office with all requested materials, and also submitted a confidential response letter for this office's review.³ On December 10, 2018, this office sent a copy of the Board's non-confidential response to Mr. Thompson and Mr. Egger. Mr. Thompson replied on the same day; Mr. Egger replied on December 15, 2018. Because Mr. Thompson's and Mr. Egger's Requests for Review allege the same potential OMA violation occurring at the same closed session meeting, this office has consolidated these matters for determination.

²In addition to the July 12, 2018, meeting, Mr. Egger also sought review of earlier closed session meetings, alleging that the June 28, 2018, recording indicated repeated violations of OMA during that meeting under the Board's previous Interim General Counsel, and that, based on that recording, Mr. Egger suspected a pattern of improper closed session discussions. However, because Mr. Egger's Request for Review did not provide any facts supporting the allegation that the Board may have violated OMA at any other particular meeting, this office determined that no further action was warranted with respect to that allegation. See 5 ILCS 120/3.5(a) (West 2016) (A "request for review * * * must include a summary of the facts supporting the allegation."). On November 19, 2018, Mr. Thompson submitted another Request for Review in which he set forth a summary of facts supporting an allegation that the Board held improper discussions during closed session meetings held on June 1, 2018, and June 7, 2018. That Request for Review was assigned file number 2018 PAC 55782, and this office determined that further inquiry was warranted on those allegations. After this office contacted the Board concerning 2018 PAC 55782, the Board voluntarily made available to the public portions of the recordings and meeting minutes from those closed sessions. This office's determination with respect to that Request for Review will be issued in a separate letter.

³5 ILCS 120/3.5(c) (West 2016) ("[T]he public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

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DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." The section 2(c) exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions *are to be strictly construed, extending only to subjects clearly within their scope.*" (Emphasis added.) 5 ILCS 120/2(b) (West 2017 Supp.).

The Board has argued that all discussions held during the July 12, 2018, closed session meeting were authorized by section 2(c)(1), and that the discussions held up until minute 35:36 of the meeting were also allowed under section 2(c)(2).

Section 2(c)(1) of OMA

The section 2(c)(1) exception permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." In construing this exception, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4. Rather, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3). Although budgetary considerations may impact the employment of certain personnel, closed session budgetary discussions that do not center on the merits or conduct of specific employees or prospective employees are not authorized by section 2(c)(1). Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018, at 4.

Because the Board's detailed response was provided to this office under a claim of confidentiality, this office is not at liberty to disclose the Board's explanation of the applicability of the section 2(c)(1) exception to the discussions that occurred during the closed session portion of the meeting. Based on this office's confidential review of the closed session verbatim recording of the July 12, 2018, meeting, however, the Board extensively discussed several specific employees. From minutes 16:35 through 21:45 of the recording, the Board discussed a dispute involving an employee. The Board discussed matters relating to another specific

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employee from minutes 36:23 through 1:16:52. From the time 1:16:52 through 1:21:23 and again from 1:24:30 through 1:46:38, the Board discussed a third specific employee. The Board also discussed performance issues concerning employees in a specific department from the time 3:48 through 6:32. All of these discussions fall within the scope of the section 2(c)(1) exception.

The entirety of the Board's discussion, however, did not stay within the scope of the section 2(c)(1) exception, as other portions did not center on *specific employees*. As stated above, section 2(c)(1) of OMA does not permit general discussion of budgetary matters and management issues applicable to categories of employees. Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018, at 4. "The elimination of a job or position – even one held by only a single employee – for budgetary or other reasons unrelated to the performance of the employee is a matter relating to budget and management which does not carry implications for an individual employee's reputation." Our review of the closed session recording indicated that the Board's discussions from the time 1:50 through 3:48, 6:32 through 15:56, 21:45 through 24:52, 24:53 through 36:23, and 1:21:24 through 1:24:29, concerned general Board matters, management issues, alignment, reporting, and personnel budgeting, rather than the merits and conduct of individual employees. To the extent that the Board may have mentioned the names of specific employees during these time periods, our review indicates those references served to provide examples of the classes in which those employees were situated; the Board's discussion did not distinguish those employees by conduct or merit, or in any other way, from other employees within the same class who were not specifically mentioned. Accordingly, the Public Access Bureau concludes that these portions of the closed session were not authorized by section 2(c)(1) of OMA.

Section 2(c)(2) of OMA

The Board also argued that discussions held from the beginning of the meeting through minute 35:36 were permissible under section 2(c)(2) of OMA. Because we have determined that certain discussions during that time period exceeded the scope of section 2(c)(1) of OMA (discussions held from 1:50-3:48, 6:32-15:56, 21:45-24:52, and 24:53-36:23), we will address whether those particular discussions instead fell within the scope of section 2(c)(2).

Section 2(c)(c) allows discussion in closed session of "[c]ollective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees." By creating the section 2(c)(2) exception, the General Assembly recognized "that the very nature of meaningful collective bargaining requires that *certain phases of the negotiating process* must be conducted privately." Ill. Att'y Gen. Op. No. 80-024, issued August 12, 1980, at 10-11.

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In Binding Opinion 15-007, the Attorney General addressed the question of whether a County Board's closed session discussion of a potential employee hiring freeze fell within the scope of section 2(c)(2) of OMA. Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 6-7. The County Board had argued that it was permitted to discuss the hiring freeze in closed session because the majority of the employees that would be affected were covered under collective bargaining agreements, but also acknowledged that the County was not in active negotiations with its collective bargaining units at the time of the discussion. Based on her review of the records from that closed session, the Attorney General determined that the County Board's discussion was not authorized by section 2(c)(2), as that exception "does not encompass a discussion of unilateral budgetary actions that would affect members of collective bargaining units outside of active or imminent collective bargaining." Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 7.

Based on the recording of the closed session of the July 12, 2018, Board meeting provided to this office, the Board's discussion there similarly concerned possible unilateral budgetary and employee management actions rather than collective negotiating issues. Neither the Board's confidential nor non-confidential response to the Requests for Review claim that the University was engaged in the negotiating process with its employees or their union. The recording itself also contains no references to active or imminent collective bargaining. Furthermore, as explained above, the discussions during the closed session meeting concern management, alignment, reporting, and budgeting issues for specific departments and categories of employees. Although many of the employees in those departments and categories may be covered by collective bargaining agreements, the Board's discussions concerned possible unilateral actions by the Board rather than collective negotiating matters with the employees' union. Accordingly, the Public Access Bureau concludes that the remaining portions of the closed session were not authorized by the section 2(c)(2) exemption.

Because we have determined that the discussions held from 1:50 through 3:48, 6:32 through 15:56, 21:45 through 24:52, 24:53 through 36:23, and 1:21:24 through 1:24:29 were not permitted by either of the closed session exceptions cited by the Board, the Public Access Bureau determines that the Board violated section 2(a) of OMA by improperly closing these discussions to the public. To remedy this violation, this office asks that the Board vote to release to Mr. Thompson and Mr. Egger, and make publicly available, the above-referenced portions of the closed session verbatim recording of its July 12, 2018, meeting. The remaining portions of the recording which discuss specific employees may remain confidential.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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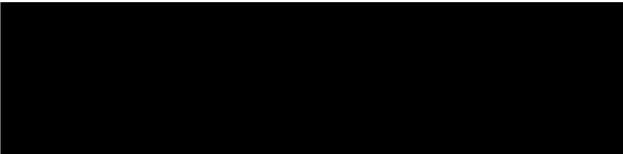


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 12, 2019

Via electronic mail



Via electronic mail

Mr. Brian P. Crowley
Attorney for Elmhurst Community Unit School District No. 205
Franczek Radelet
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
bpc@franczek.com

RE: OMA Request for Review – 2018 PAC 53702

Dear [REDACTED] and Mr. Crowley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Elmhurst Community Unit School District No. 205 (School District) did not hold an unauthorized discussion in closed session during its April 24, 2018, meeting.

BACKGROUND

On June 22, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board potentially violated OMA during its April 24, 2018, meeting by improperly discussing a matter in closed session that was outside the scope of the OMA exceptions that the Board cited as its basis for closing the meeting. Specifically, [REDACTED] pointed to the agenda item "Adoption of Resolution Authorizing Reduction in Force and Recall of Educational Support Personnel" under section 11 of the agenda, which was titled "Approval of

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Closed Session Item."¹ [REDACTED] contended that "[d]ue to its placement in Section 11 of the agenda, one may conclude that this agenda item was discussed in closed session."² [REDACTED] alleged that the resolution "did not concern specific employees of the School District, but rather a broad group of Instructional Assistant-Reading employees."³ He referred this office to the meeting's minutes, which state that the Board approved the resolution in an effort "to continue moving forward with the District's mission, vision and goals regarding how instruction is provided to students in the District. The District is moving to a push-in model of reading instruction and will no longer be pulling students from core academic instruction to receive support."⁴ The minutes further state that "[n]o person on this list currently employed by the District is losing a job" and that the individuals would retain their employment.⁵ [REDACTED] contended that the closed session discussion "did not appear to have covered the relative merits or performance of specific employees" within the scope of section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.)), and that the discussion instead involved "general staffing concerns."⁶

On July 3, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to respond in writing to the allegations in [REDACTED] Request for Review. This office also asked the Board to provide copies of the meeting agenda, minutes (both open and closed), and closed session verbatim recording for this office's confidential review. On July 18, 2018, this office received the requested materials, including both a complete version of the Board's written response for this office's confidential review and a redacted version for this

¹Elmhurst Community Unit School District 205 Board of Education, Agenda Item 11.B., Adoption of Resolution Authorizing Reduction in Force and Recall of Educational Support Personnel (April 24, 2018).

²Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 22, 2018).

³Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 22, 2018).

⁴Elmhurst CUSD 205 Board of Education, Meeting and Reorganization, April 24, 2018, Minutes 10.

⁵Elmhurst CUSD 205 Board of Education, Meeting and Reorganization, April 24, 2018, Minutes 10.

⁶Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 22, 2018).

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office to forward to [REDACTED]⁷ On July 23, 2018, this office forwarded a copy of the Board's redacted response to [REDACTED] he did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Accordingly, OMA requires that all meetings of a public body remain open to the public unless an applicable exception in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.)) is properly invoked. 5 ILCS 120/2(a) (West 2017 Supp.). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2017 Supp.).


Section 2(c)(1) of OMA permits a public body to enter closed session to discuss "[t]he appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body or legal counsel for the public body[.]" "Section 2(c)(1) of OMA permits public bodies to discuss employment-related topics such as the performance, discipline, and dismissal of a specific employee[.] * * * [S]ection 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4-5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3).

In the redacted version of its response, the Board denied [REDACTED] claim that its closed session discussion exceeded the scope of section 2(c)(1). The Board asserted: "While the Board does refer to the [Reduction in Force] resolution during closed session, it is in the context of discussing a personnel matter regarding the employment of a specific employee who is the subject matter of the discussion."⁸ In its complete response, the Board provided additional details about its closed session discussion concerning a specific employee.

Based on this office's confidential review of the April 24, 2018, closed session verbatim recording, the Board mentioned the resolution in the context of discussing a specific employee. Because the Board has not voted to release the closed session verbatim recording to the public, this office cannot reveal the contents of the Board's discussion other than to confirm that the Board discussed a specific employee's employment and performance rather than general staffing concerns. Accordingly, this office concludes that section 2(c)(1) authorized the Board's April 24, 2018, closed session discussion.


⁷See 5 ILCS 120/3.5(c) (West 2016) ("The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

⁸Letter from Brian P. Crowley, Franczek Radelet to Teresa Lim, Assistant Attorney General, Public Access Bureau (July 18, 2018).


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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


TERESA LIM
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

April 16, 2019

Via electronic mail

Mr. William Thompson
President, Western Illinois University Chapter
University Professionals of Illinois
P.O. Box 414
Macomb, Illinois 61455
[REDACTED]

Via electronic mail

Ms. Elizabeth Duvall
General Counsel
Western Illinois University
1 University Circle
Macomb, Illinois 61455
el-duvall@wiu.edu

RE: OMA Request for Review – 2018 PAC 55782

Dear Mr. Thompson and Ms. Duvall:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that, during the closed session portions of its June 1, 2018, and June 7, 2018, meetings, the Board of Trustees (Board) of Western Illinois University (University) improperly discussed certain matters which were outside the scope of the exceptions to the general requirement that public bodies conduct business openly.

On November 18, 2018, this office received a Request for Review from Mr. William Thompson, on behalf of the Western Illinois University Chapter of the University Professionals of Illinois, alleging improper closed session discussions by the Board during its June 1, 2018, and June 7, 2018, meetings. Specifically, Mr. Thompson stated that he had recently listened to the recording of portions of the closed session meeting held by the Board on June 28, 2018, and noted a comment made by the Board's Chair about previous discussions

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concerning layoffs. Mr. Thompson alleged that if such layoff discussions had occurred at either the June 1, 2018, or June 7, 2018, meetings, those discussions would not be authorized under the closed sessions exceptions described in section 2(c) of the Open Meetings Act (5 ILCS 120/2(c) (West 2017 Supp.)).

Despite submitting his Request for Review more than 60 days after the date of the alleged violations, Mr. Thompson only discovered the violations after the release of the closed session recording, which the Board had previously maintained as confidential.¹ This office concludes that because these alleged violations occurred in closed session, they could not have been discovered within 60 days by a person using reasonable diligence. Mr. Thompson discovered the alleged violations within two years of the meeting, and filed this Request for Review within 60 days of that discovery. Therefore, this Request for Review was filed within the statutory time limitation. *See* 5 ILCS 120/3.5(a) (West 2016).

On November 29, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide this office with copies of the closed session minutes and closed session verbatim recordings of the June 1, 2018, and June 7, 2018, meetings for this office's review, together with a written response to Mr. Thompson's allegations.

On December 21, 2018, the Board responded, stating that it would voluntarily make available portions of the recordings and meeting minutes from the above-referenced closed session meetings. The Board contended that the remainder of the discussions during those meetings were authorized by the closed session exceptions and provided further explanation in its confidential response letter to this office.² On February 26, 2019, this office sent a copy of the Board's non-confidential response to Mr. Thompson. On March 1, 2019, the Board stated that it had voluntarily posted redacted copies of the closed session recordings on the University's website. In a March 27, 2019, telephone conversation with the Public Access Counselor, Mr. Thompson requested that this office continue its review of the entireties of the closed session recordings of both meetings.

¹The Board made the recording of portions of its June 28, 2018, closed session meeting available to Mr. Thompson on November 5, 2018, in compliance with the Attorney General's Binding Opinion 18-012, which determined that portions of the Board's discussion at that meeting were not permitted by the closed session exceptions to the Open Meetings Act. Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018.

²5 ILCS 120/3.5(c) (West 2016) ("[T]he public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

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DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." The section 2(c) exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions **are to be strictly construed, extending only to subjects clearly within their scope.**" (Emphasis added.) 5 ILCS 120/2(b) (West 2017 Supp.).

As an initial matter, the Board has made publicly available extensive portions of its June 1, 2018, and June 7, 2018; closed session recordings. However, the Board's non-confidential response to this office argued that discrete portions of both meetings were authorized by exceptions to the general requirement that public bodies conduct public business openly.

Section 2(c)(1) of OMA

The Board argued that discussions held during the June 1, 2018, meeting from 44:15 to 45:02 and from 1:51:33 to 2:34:09 were authorized by section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.)). The Board also contended that discussions held during the June 7, 2018, meeting from 19:00 to 22:37, 58:45 to 58:51, 1:07:09 to 1:09:51, and from 1:48:13 to 3:26:21 were similarly authorized by section 2(c)(1).

The section 2(c)(1) exception permits a public body to discuss in closed session "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." In construing this exception, the Attorney General has concluded that "the General Assembly did not intend to permit public bodies to hold general discussions concerning categories of employees in closed session pursuant to section 2(c)(1)." Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 4. Rather, "section 2(c)(1) of OMA 'is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees.'" Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, at 5 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3). Although budgetary considerations may impact the employment of certain personnel, closed session budgetary discussions that do not center on the merits or conduct of specific employees or prospective employees are not authorized by section 2(c)(1). Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018, at 4.

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Because the Board's detailed response was provided to this office under a claim of confidentiality, this office is not at liberty to discuss in this determination the Board's explanation of the applicability of the section 2(c)(1) exception to the specific discussions that occurred during the closed session meetings. Based on this office's confidential review of the closed session verbatim recording from the June 1, 2018, meeting, the Board discussed specific employees in two discrete portions. From 44:15-45:02, the Board discussed the performance of two specific employees. The Board also extensively discussed the performance of another employee from 1:51:33 to 2:34:09. The Board also discussed specific employees in discrete portions of its June 7, 2018, meeting. From 19:00 to 22:37, the Board discussed, in part, the performance of a specific employee. From 58:45 to 58:51, brief mention was made of the performance of a specific employee. From 1:07:09 to 1:09:51, the Board discussed, in part the performance of two specific employees. Finally, from 1:48:13 to 3:26:21, the Board discussed the performance of a specific employee. Accordingly, the Public Access Bureau concludes that these portions of the closed session were authorized by section 2(c)(1) of OMA.

Section 2(c)(2) of OMA

The Board also argued that discussions held during its June 7, 2018, meeting were permissible under section 2(c)(2) of OMA (5 ILCS 120/2(c)(2) (West 2017 Supp.)). Section 2(c)(2) allows discussion in closed session of "[c]ollective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees." By creating the section 2(c)(2) exception, the General Assembly recognized "that the very nature of meaningful collective bargaining requires that certain phases of the negotiating process must be conducted privately." Ill. Att'y Gen. Op. No. 80-024, issued August 12, 1980, at 10-11.

Based on this office's confidential review of the closed session verbatim recording from the June 7, 2018, meeting, the Board's discussion from 2:40 to 17:12 pertained to ongoing collective negotiating matters. Accordingly, the Public Access Bureau concludes that those portions of the closed session were authorized by section 2(c)(2).

Section 2(c)(6) of OMA

The Board next contended that a discussion held during its June 7, 2018, meeting was permissible under section 2(c)(6) of OMA (5 ILCS 120/2(c)(6) (West 2017 Supp.)). Section 2(c)(6) of OMA permits a public body to enter into closed session to consider "[t]he **setting of a price** for sale or lease of property owned by the public body." (Emphasis added.) The clear and unambiguous language of section 2(c)(6), which must be strictly construed, does not allow a public body to discuss the sale or lease of public property in closed session other than to set a price.

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Because the Board's detailed response was provided to this office under a claim of confidentiality, this office is not at liberty to discuss in this determination the Board's explanation of the applicability of the section 2(c)(6) exception to the specific discussions that occurred during the June 7, 2018, closed session. However, based on this office's confidential review of the closed session verbatim recording from that meeting, the Board's discussion from 17:12 to 19:00 did not concern the setting of a price for sale or lease of property owned by the Board or University. Accordingly, the Public Access Bureau concludes that that portion of the closed session was not authorized by section 2(c)(6) of OMA. To remedy this violation, this office asks that the Board vote to release to Mr. Thompson, and make publicly available, the above-referenced portion of the closed session verbatim recording from its June 7, 2018, meeting.

Section 2(c)(11) of OMA

The Board next argued that certain discussions held during its June 7, 2018, meeting were permissible under section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.)). Section 2(c)(11) of OMA permits public bodies to discuss "[l]itigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal[.]" This office has previously found "that a Request for Review constitutes 'litigation' pending before an 'administrative tribunal' [as contemplated by section 2(c)(11) of OMA] during the time period within which the matter may be resolved by the issuance of a binding opinion." Ill. Att'y Gen. PAC Rev. Ltr. 46034, issued August 2, 2017, at 3. Under section 3.5(e) of OMA, a binding opinion must be issued within 60 days of receipt of a Request for Review unless that time period is extended by not more than 21 business days.

Because the Board's detailed response was provided to this office under a claim of confidentiality, this office is not at liberty to discuss in this determination the Board's explanation of the applicability of the section 2(c)(11) exception to the specific discussions that occurred during the June 7, 2018, closed session. However, based on this office's confidential review of the closed session verbatim recording from that meeting, the Board's discussions from 1:07:09 to 1:09:51 and from 3:26:21 to 3:34:40 concerned litigation pending before a court or administrative tribunal. Accordingly, the Public Access Bureau concludes that those portions of the closed session were authorized by section 2(c)(11) of OMA.

Section 2(c)(29) of OMA

The Board finally contended that a certain discussion held during its June 7, 2018, meeting was permissible under section 2(c)(29) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.)). Section 2(c)(29) of OMA permits public bodies to discuss "[m]eetings between internal or external auditors and governmental audit committees * * * when the discussion involves internal control weaknesses[.]"


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Because the Board's detailed response was provided to this office under a claim of confidentiality, this office is not at liberty to discuss in this determination the Board's explanation of the applicability of the section 2(c)(29) exception to the brief discussion that occurred during the June 7, 2018, closed session. However, based on this office's confidential review of the closed session verbatim recording from that meeting, the Board's discussion from 19:00 to 22:37 concerned meetings about internal control weaknesses between the University's auditor and the Board's Audit Committee. Accordingly, the Public Access Bureau concludes that that portion of the closed session was authorized by section 2(c)(29) of OMA.

The Board has acknowledged that the remaining portions of the June 1, 2018, and June 7, 2019, closed session discussions were not permitted under any closed session exception. Accordingly, the Public Access Bureau determines that the Board violated section 2(a) of OMA by improperly closing these discussions to the public. The Board has remedied these violations by making publicly available those referenced portions. To remedy the improper discussion under section 2(c)(6) of OMA as described above, this office asks that the Board vote to release to Mr. Thompson, and make publicly available, that portion of the June 7, 2018, closed session recording.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have questions, please contact me at (217) 785-7438 or the Springfield address listed on the first page of this letter.

Very truly yours,



CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 16, 2019

Via electronic mail

Ms. Terra Sinkevicius
Mandarin Chinese Language Teacher
Social Science Teacher
P.P.L.C. Governing Body Member
James Wadsworth Elementary School
tjsinkeviciu@cps.edu

RE: OMA Request for Review – 2019 PAC 57561

Dear Ms. Sinkevicius:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted in this matter.

On April 4, 2019, this office received your Request for Review alleging that James Wadsworth Elementary School's professional personnel leadership committee (PPLC) and local school council (LSC) violated the requirements of OMA. Specifically, you alleged that a co-chairperson of the PPLC has been "informing staff members at Wadsworth that PPLC meetings were not open to the public[.]" and "has ripped down notices from the walls in an attempt to stop people from coming to the PPLC meetings." (Emphasis in original.)¹ You provided this office with a copy of a February 7, 2019, e-mail to school staff from that co-chairperson, Ms. Aldina Loggins, and copies of certain pages from an LSC binder that you stated you photographed. With regard to the LSC, you alleged that you had "been denied the opportunity to speak at 2 LSC meetings during open forum."² You further alleged that "[t]he doors are sometimes locked so that people cannot come to LSC meetings and students are not

¹E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to [Joshua Jones] (April 4, 2019).

²E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to [Joshua Jones] (April 4, 2019).

allowed to attend the LSC meetings to voice their concerns to the LSC body."³ Additionally, you claimed that there is a "lack of meeting minutes notes being published by the LSC including closed session notes that [you] have asked for access to but was [] given no response." (Emphasis in original.)⁴

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later than 60 days after the alleged violation**. If facts concerning the violation are not discovered within the 60-day period, but are **discovered at a later date**, not exceeding 2 years after the alleged violation, **by a person utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. The request for review must be in writing, must be signed by the requester, and **must include a summary of the facts supporting the allegation**. (Emphasis added.)

Under the plain language of section 3.5(a), a person must submit a Request for Review within 60 days after an alleged violation occurred unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. Additionally, a Request for Review of an alleged OMA violation must contain a factual summary sufficient to indicate that the public body potentially violated OMA.

In this matter, you have alleged that the PPLC has been improperly holding meetings that are not open to the public, but have not identified any specific meetings that allegedly violated OMA. This office has reviewed the materials provided in your Request for Review, including the copy of the February 7, 2019, e-mail sent from Ms. Loggins to certain school staff. The e-mail states, in pertinent part:

The PPLC meeting schedule[d] for Friday[,] February 8, 2019 is NOT an open meeting. We are still in the organization

³E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to [Joshua Jones] (April 4, 2019).

⁴E-mail from Terra Sinkevicius, Mandarin Chinese Language Teacher, Social Science Teacher, P.P.L.C. Governing Body Member, James Wadsworth Elementary School, to [Joshua Jones] (April 4, 2019).

phase. As soon as we can get the organization of WPPLC finalized]. We will post the first official open WPPLC meeting.^{15]}

While the e-mail indicates that a PPLC meeting was planned for February 8, 2019, for the purpose of discussing the "organization" of the PPLC, you have not clearly alleged or provided any facts supporting a claim that the PPLC ended up holding an improper meeting on that particular date and/or any other particular date(s). Further, you have not provided any additional details regarding the alleged improper PPLC meetings, such as the matters that were discussed during those particular meetings or the status of the committee at the time of the planned February 8, 2019, meeting. Absent additional information supporting the allegation that the PPLC held one or more meetings that were improperly closed to the public, this office has an insufficient basis to take further action with regard to your claims concerning that committee.

As to the LSC, you have alleged that you were denied an opportunity to speak during the open forum portion of two council meetings, but similarly have not identified the specific dates on which those two meetings occurred. You also have not identified the dates of the meetings that students or other members of the public were allegedly prevented from attending. Although you provided this office with copies of the agendas for certain LSC meetings, those agendas reflect meetings that occurred more than 60 days before the date of the submission of your Request for Review. As discussed above, a Request for Review must be submitted within 60 days after the alleged violation occurred unless the person did not discover facts concerning the alleged violation within those 60 days despite utilizing reasonable diligence. Here, you have not provided information demonstrating that you were unable to discover any alleged OMA violations with regard to those meetings within the 60 days after they were held despite utilizing reasonable diligence. Finally, with regard to your claim concerning an alleged lack of published LSC meeting minutes, section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) requires only the "governing body" of a public body to publish its minutes online. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 56468, issued March 15, 2019 (the "governing body" of the Chicago Public Schools is the Board of Education, not the LSC).⁶ Although section 2.06(b) also requires a public body to make its meeting minutes available for public inspection within 10 business days after approval, you did not provide this office with information suggesting that the LSC had failed to make any meeting minutes available for public inspection within 10 business days after approving them.

Because your Request for Review did not provide a sufficient factual basis from which this office could conclude that the PPLC or LSC of James Wadsworth Elementary School

¹⁵E-mail from [Aldina] Loggins, Co-chair of WPPLC, to [School Staff] (February 7, 2019).

⁶This office also notes that Ms. Sinkevicius has an open FOIA Request for Review (2019 PAC 56549) concerning the response by James Wadsworth Elementary School to a FOIA request seeking copies of the school's LSC meeting minutes and agendas for a certain timeframe, including closed session agendas.

Ms. Terra Sinkevicius
April 16, 2019
Page 4

violated OMA, and because it appears that you did not submit your Request for Review before the statutory time period expired with regard to the LSC meetings at issue in the materials you provided, this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Ms. Aldina Loggins
James Wadsworth Elementary School
Co-Chair, Professional Personnel Leadership Committee
James Wadsworth Elementary School
6650 South Ellis Avenue
Chicago, Illinois 60637
arloggins@cps.edu

Via electronic mail
Mr. Marcus Pittman (for forwarding to the LSC chairperson)
Chicago Public Schools Office of Local School Council Relations
Garfield Park Office
2651 West Washington Boulevard, 3rd Floor
Chicago, Illinois 60612
mhpittman@cps.edu



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 17, 2019

Via electronic mail



Via electronic mail

Ms. Sue E. McMillan
City Clerk
City of Pekin
111 South Capitol Street
Pekin, Illinois 61554
smcmillan@ci.pekin.il.us

RE: OMA Request for Review – 2019 PAC 56630

Dear [REDACTED] and Ms. McMillan:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, this office concludes that the City Council (City Council) of the City of Pekin (City) did not violate OMA in connection with its approval and website posting of its December 10, 2018, meeting minutes.

In his Request for Review, [REDACTED] alleged that the draft minutes for the December 10, 2018, meeting were not included in the City Council's informational meeting packet posted to the City's website before the January 14, 2019, meeting. He asserted that because the draft minutes were not in the packet, the City Council did not review the minutes before approving them at the January 14, 2019, meeting, which he alleged is an improper approval. [REDACTED] also alleged that the City Council violated OMA by failing to timely post on the City's website the minutes of the City Council's December 10, 2018, meeting. On March 7, 2019, this office forwarded a copy of the Request for Review to the City Council and asked it to provide this office with a detailed response to [REDACTED] allegation concerning the posting of the December 10, 2018, meeting minutes to the City's website. The City responded on March

Ms. Sue E. McMillan
April 17, 2019
Page 2

15, 2019. On March 19, 2019, this office forwarded a copy of the response to [REDACTED]. He replied later that day.

DETERMINATION

Approval of December 10, 2018, Minutes

[REDACTED] alleged that the City Council violated OMA in connection with its January 14, 2019, meeting by failing to include a copy of the draft December 10, 2018, meeting minutes in the City Council members' informational packet that was publicly posted for the January 14, 2019, meeting. [REDACTED] further contended that the absence of the draft minutes in the packet indicated that the Council did not review the minutes before approving them, and therefore, the minutes were improperly approved.

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part: "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." (Emphasis added.) Based on the plain language of section 2.02(a), the City Council must post notices and agendas for its meetings at least 48 hours in advance of its regular meetings. No provision of OMA, however, requires the City Council to publicly post informational meeting packets in addition to meeting notices and agendas. Further, section 2.06(b) of OMA requires meeting minutes to be open to the public only after the minutes have been approved by the public body. Therefore, even if the City Council chooses to publicly post informational meeting packets, it is not required to include draft meeting minutes within those informational packets.

In its response to this office, the City explained that City Council members have continuous electronic access to draft meeting minutes through the City's legislative management software. It asserted that even if the draft December 10, 2018, meeting minutes were not included in the publicly posted informational packets, the software provided Council members with the opportunity to review the minutes before approving them at the January 14, 2019, meeting.

Based on the information provided by [REDACTED] and the City, this office has no basis on which to conclude that the City Council members did not review the draft December 10, 2018, meeting minutes prior to approving them. Accordingly, this office concludes that [REDACTED] allegations concerning the City Council's approval of the December 10, 2018, meeting minutes are unfounded.

Posting of December 10, 2018, Minutes

Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides:

A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later. **The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body.** A public body that has a website that the **full-time staff of the public body maintains** shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. (Emphasis added.)

In its response to this office, the City acknowledged that the minutes for the December 10, 2018, meeting were inadvertently posted to the City's website fourteen days after the minutes were approved, which is outside of the scope of the above-cited posting requirement.

The City, however, asserted that while its practice is to comply with the posting requirements of section 2.06(b) of OMA, it is not required to do so because its website is not maintained by full-time staff. The City's response also stated that the meeting minutes for the December 14, 2018, meeting were timely available for the public to view in a physical format. In his reply, [REDACTED] challenges the City's interpretation of section 2.06(b) of OMA, stating "[t]he ACT does not require a 'full time dedicated' person to man or operate the website, only the full time staff."¹ In an April 15, 2019, e-mail with an Assistant Attorney General in the Public Access Bureau, the City Clerk confirmed that no full-time staff member of the City maintains its website. Instead, she stated that the City's website is maintained by a third-party website maintenance provider, and explained that certain City employees, such as the City Clerk and the Deputy Clerk, are permitted to post agendas and meeting minutes for the City Council on the City's website because they have been authorized to do by the City's information technology department, but she indicated that these employees do not maintain the City's website.

The above-cited provision of OMA is clear and unambiguous: the City Council is only **required** to post minutes on the City's website if the website is maintained by full-time staff of the public body. Here, because the City Council's website is not maintained by full-time staff of the public body, this office concludes that the posting of the meeting minutes for the City

¹E-mail from [REDACTED] to [Shannon] Barnaby, [Assistant Attorney General, Public Access Bureau] (March 19, 2019).

[REDACTED]
Ms. Sue E. McMillan
April 17, 2019
Page 4

Council's December 10, 2018, meeting on the City's website more ten days after the approval of those minutes does not violate section 2.06(b) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have questions, you may contact me by mail at the Chicago address on the first page of this letter. Thank you. .

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 18, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57490


Dear 

The Public Access Bureau has received your Request for Review alleging a violation of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) by the Glenwood Village Planning Commission (Commission) with respect to the minutes of its October 2018, meeting. This office's review of the information you have furnished, however, provides no basis for this office to conclude that the Commission violated OMA.

On March 30, 2019, you submitted this Request for Review alleging that the Commission lacked minutes for its October 2018 meeting. Section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2016)) provides, in pertinent part:

A public body shall approve the minutes of its open meeting within 30 days after that meeting **or at the public body's second subsequent regular meeting, whichever is later.** The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. (Emphasis added.)

Your Request for Review included correspondence from Glenwood Village Administrator Brian Mitchell, who indicated that no minutes existed for the Commission's October 2018, meeting. On April 17, 2019, a Supervising Attorney in the Public Access Bureau called Mr. Mitchell for clarification concerning the meeting minutes in question. Later that same day, Mr. Mitchell e-mailed the Supervising Attorney, explaining that "[t]here has not been another meeting since [the October, 2018, meeting] and therefore no business has been


April 18, 2019


Page 2

conducted. I will request that at the next meeting they approve the notes that were taken by a member from the October 2018 meeting."¹

Thus, the available information indicates that the Commission has not yet held a second subsequent meeting since its October 2018 meeting. Under the plain language of section 2.06(b), a public body is not required to approve minutes of a meeting until "30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later." Accordingly, your claim that the Commission violated OMA by failing to approve minutes of its October 2018 meeting is unfounded.

This letter serves to close this file. If you have any questions, please contact me at (217) 785-7438 or cboggs@atg.state.il.us.

Very truly yours,


CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

57490 o unf mun

cc: *Via electronic mail*
Mr. Brian D. Mitchell
Village Administrator
Village of Glenwood
One Asselborn Way
Glenwood, Illinois 60425
bmitchell@villageofglenwood.com

¹E-mail from Brian D. Mitchell, Village Administrator, Village of Glenwood, to Christopher Boggs (April 18, 2019).



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 18, 2019

Via electronic mail
Ms. Cheryl Selburg
Assistant Vice President
Senior Client Associate
Wells Fargo
6810 North Knoxville Avenue
Peoria, Illinois 61614
[REDACTED]

RE: FOIA Request for Review – 2019 PAC 57649

Dear Ms. Selburg:

The Public Access Bureau has received your Request for Review alleging that the Village of Spring Bay (Village) Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2016)) in connection with its February 8, 2019, special meeting. Because this Request for Review was submitted outside of the statutory deadline, this office can take no action with respect to this matter.

Your Request for Review alleges that the Board: (1) failed to vote to enter closed session;¹ and (2) improperly took final action in closed session to abolish the Village's police department.²

¹Under section 2a of OMA (5 ILCS 120/2a (West 2016)), a public body may close a portion of its meeting "upon a majority vote of a quorum present" during the open portion of its meeting along with "[t]he vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting."

²Section 2(e) of OMA (5 ILCS 120/2(e) (5 ILCS 120/2(e) (West 2017 Supp.)), as amended by Public Act 100-646, effective July 27, 2018) expressly prohibits public bodies from taking final action in closed session, stating: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

Ms. Cheryl Selburg
April 18, 2019
Page 2

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in pertinent part:


A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General **not later 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** (Emphasis added.)

You submitted this Request for Review on April 11, 2019. The February 8, 2019, special meeting, therefore, occurred more than 60 days before you filed this Request for Review. Section 3.5(a) of OMA does permit a person to file a Request for Review within 60 days of discovering an alleged violation, for up to two years after the date of the alleged violation, but only if the person did not discover facts concerning the alleged violation within 60 days after it allegedly occurred despite using **reasonable diligence**.

Your Request for Review did not provide any facts from which this office could conclude that you did not discover the alleged February 8, 2019, violation within 60 days after that meeting despite using reasonable diligence. On the contrary, you acknowledge that you attended the February 8, 2019, special meeting. Therefore, you would have been aware of the facts concerning the OMA violations that you described in connection with that special meeting at the time of the meeting. Because the statutory deadline for filing a Request for Review expired before you submitted your allegations concerning the Board's February 8, 2019, special meeting, section 3.5(a) of OMA precludes the Public Access Counselor from reviewing those allegations.

This office will take no further action in this matter, and this file is closed. If you have any questions, you may contact me by mail at the Chicago address on the first page of this letter or by e-mail at sbarnaby@atg.state.il.us.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

Ms. Cheryl Selburg

April 18, 2019

Page 3

57649 o no fi war 60 days mun

cc: The Honorable Ralph Atherton
Acting President
Village of Spring Bay Board of Trustees
407 Caroline Street
Spring Bay, Illinois 61611



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 19, 2019

Via electronic mail



RE: OMA Request for Review – 2019 PAC 57496

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons explained below, this office has determined that no further action is warranted in this matter.

On April 1, 2019, you submitted this Request for Review alleging that the Pleasant Plains Community Unit School District No. 8 (District) Board of Education (Board) violated OMA. You assert that, based on the Board's responses to this office concerning Requests for Review that you previously filed, you believe the minutes of the Board's closed sessions during its meetings from July through December, 2018, indicate that the Board had improper discussions in closed session. Specifically, you state that the Board:

[H]as resorted to concealing discussions that exceed cited exception from not only the public, but from those who are authorized with determining if there is a basis for further inquiry over an executive session due to a Request for Review.

It is apparent due to the information above [OMA Requests for Review – 2018 PAC 52862, 54938], that what was documented in executive session meeting minutes of the February, April, and July 2018 executive session, served to conceal district business

██████████
April 19, 2019

Page 2

including apparent OMA violations including the failure to document district business discussed in executive session.^[1]


You request that the Board make public the recordings of the closed sessions that occurred from July through December, 2018.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a "request for review must be in writing, must be signed by the requester, and *must include a summary of the facts supporting the allegation.*" (Emphasis added.) Your allegation that the Board's closed session meeting minutes conceal improper discussions that took place during each of its meetings from July through December 2018, meetings is speculative and the information that you provided does not support that broad assertion. Moreover, based upon a review of the closed session meeting minutes that you provided with this Request for Review, the topics that were identified as being discussed by the Board during the relevant closed sessions relate to the "specific employee" exception in section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.) as amended by Public Act 100-646, effective July 27, 2018); the "pending litigation" exception in section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2017 Supp.) as amended by Public Act 100-646, effective July 27, 2018), and the "student matters" exception in section 2(c)(10) of OMA (5 ILCS 120/2(c)(10) (West 2017 Supp.) as amended by Public Act 100-646, effective July 27, 2018), which the Board publicly cited and identified as its reasons for entering closed session.²

Therefore, the closed session minutes provide no basis upon which this office could conclude that the Board's discussions did not fall within the scope of the cited exceptions under which it closed the meetings in questions. The allegation that the Board's discussions were not authorized by those exceptions is speculative. Accordingly, this office has determined that no further action is warranted in this matter.


¹E-mail from ██████████ to Public Access [Bureau] (April 1, 2019).

²Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, July 23, 2018, Minutes 4; Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, August 27, 2018, Minutes 2; Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, September 24, 2018, Minutes 5; Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, October 22, 2018, Minutes 3; Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, November 26, 2018, Minutes 3; Pleasant Plains Community Unit School District No. 8 Board of Education, Meeting, December 17, 2018, Minutes 4. See <https://v3.boardbook.org/Public/PublicHome.aspx?ak=1001022>


April 19, 2019
Page 3

If you have any questions, you may contact me by mail at the Chicago address at the bottom of the first page of this letter. This letter serves to close this matter.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

57496 o no fi war sd

cc: *Via electronic mail*
The Honorable Gregg Humphrey
President
Pleasant Plains Community Unit School District No. 8
315 West Church Street
Pleasant Plains, Illinois 62677
ghumphrey@ppcusd8.org

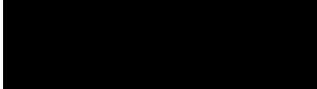


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

April 22, 2019

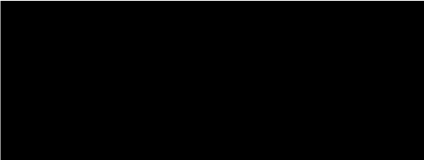
Via electronic mail



Via electronic mail

Mr. Michael J. Castellino
Robbins, Saloman & Patt, Ltd.
2222 Chestnut Avenue, Suite 101
Glenview, Illinois 60026
mcastellino@rsplaw.com

Via electronic mail



Via electronic mail

Mr. Paul L. Stephanides, Village Attorney
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
pstephanides@oak-park.us

RE: FOIA & OMA Requests for Review – 2018 PAC 54925, 55128, 55728

Dear [REDACTED] Mr. Castellino, and Mr. Stephanides:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2016)) and section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). Because the three above-referenced Requests for Review allege similar violations of FOIA and OMA, the Public Access Bureau has consolidated these matters for this determination. For the reasons stated below, this office concludes that the Oak Park Economic Development Corporation (Corporation) is not a public body subject to the requirements of FOIA or OMA. This office further concludes, however, that because the Village of Oak Park (Village) has contracted with the Corporation to perform a governmental function, certain records in possession of the Corporation are considered public records of the Village pursuant to section 7(2) of FOIA (5 ILCS 140/7(2) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018).

[REDACTED]
Mr. Michael J. Castellino
Mr. Paul L. Stephanides
April 22, 2019
Page 2

2018 PAC 54925

On September 12, 2018, [REDACTED] submitted a twelve-part FOIA request to the Corporation seeking records concerning the development of property at 801 South Oak Park Avenue. In particular, [REDACTED] request sought the following records:

REQUEST NO. 1: All OPEDC [Oak Park Economic Development Corporation] documents and communications relating to the rezoning of the Property.

REQUEST NO. 2: All OPEDC documents and communications relating to the Property.

REQUEST NO. 3: All OPEDC documents and communications with TCB [(The Community Builders, Inc.)] relating to the Property.

REQUEST NO. 4: All OPEDC documents and communications with TCB.

REQUEST NO. 5: All OPEDC documents and communications with NBORE Investments LLC relating to the property.

REQUEST NO. 6: All OPEDC documents and communications with NBORE Investments LLC.

REQUEST NO. 7: All OPEDC documents and communications with Community Bank relating to the property.

REQUEST No. 8: All OPEDC documents and communications with Community Bank.

REQUEST NO. 9: All OPEDC documents and communications with OAK PARK I HOUSING MM LLC.

REQUEST NO. 10: All OPEDC documents and communications with Morgan D. Wilson.

[REDACTED]
Mr. Michael J. Castellino
Mr. Paul L. Stephanides
April 22, 2019
Page 3.

REQUEST NO. 11: All OPEDC documents and communications with Thomas Bouonpane.

REQUEST NO. 12: All OPEDC documents and communications with OAK PARK I HOUSING OWNER LLC.^[1]

On September 12, 2018, the Corporation responded by asserting that it was not a public body subject to the requirements of FOIA. On September 18, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau contesting the denial of his FOIA request by the Corporation. In particular, [REDACTED] asserted that the Corporation "acts as a function of village government, is fully funded by the Village of Oak Park, and the Mayor and a [V]illage trustee sit on their board, directing the organization."²

On September 25, 2018, this office sent a copy of the Request for Review to the Corporation and asked it to provide copies of its records of incorporation and any agreements it had entered into with the Village. The Public Access Bureau also asked the Corporation to provide a detailed explanation for the assertion that it is not a public body subject to the requirements of FOIA. On October 4, 2018, counsel for the Corporation submitted those materials along with a written answer. This office forwarded the Corporation's answer to [REDACTED] who replied on October 11, 2018.

2018 PAC 55127

On September 12, 2018, the same day that he submitted the twelve-part FOIA request to the Corporation, [REDACTED] submitted an identical request to the Village. On September 27, 2018, the Village denied [REDACTED] request asserting that the requested records are not public records of the Village because the Corporation is not a public body subject to FOIA. On September 28, 2018, [REDACTED] submitted a Request for Review to the Public Access Bureau contesting the denial of his FOIA request by the Village. [REDACTED] Request for Review asserted that Village was obligated to provide records in the possession of the Corporation pursuant to an operating agreement between the Village and the Corporation.

¹FOIA Request from [REDACTED] to Allison Marola, [Office Manager], Oak Park Economic Development Corporation (September 12, 2018).

²E-mail from [REDACTED] to Public Access, Office of the Attorney General (September 18, 2018).

Mr. Michael J. Castellino
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On October 3, 2018, this office sent a copy of the Request for Review to the Village and asked it to respond to [REDACTED] Request for Review. In particular, this office requested that the Village explain whether records in the possession of the Corporation would be considered the Village's records under section 7(2) of FOIA (5 ILCS 140/7(2) (West 2017 Supp.), as amended by Public Act 100-732, effective August 3, 2018). On October 12, 2018, the Village provided this office with a written answer. On October 15, 2018, this office sent [REDACTED] a copy of the Village's answer; he did not reply.

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On November 14, 2018, [REDACTED] submitted a Request for Review alleging that the Corporation had failed to adhere to the requirements of OMA in connection with its meeting held on or about October 19, 2018. [REDACTED] alleged that Corporation meetings are closed to the public and that minutes of the meetings are not made publicly available. [REDACTED] contended that the Corporation is a public body because the Village "provides the major funding for the [Corporation]" and because "the mayor and a [Village Board of Trustees] member a[re] members of the [Corporation.]"³


On November 21, 2018, the Public Access Bureau sent a copy of the Request for Review to the Corporation and asked it to provide this office with information concerning the October 19, 2018, meeting of the Corporation along with copies of any agenda or minutes of that meeting. This office also requested that the Corporation respond to [REDACTED] allegation that it is a public body subject to the requirements of OMA. On December 4, 2018, counsel for the Corporation provided this office with a written answer; [REDACTED] submitted replies on December 13, 2018, and December 14, 2018.

BACKGROUND

The Corporation was incorporated in 1974 as a not-for-profit corporation "[t]o promote additional employment opportunities; to instruct individuals to improve or develop their capabilities for employment opportunities; to attract industry, trade, commerce and residential developments; all within and for the Village of Oak Park."⁴ The Corporation was also incorporated "[t]o contract with and otherwise participate with * * * [the] Village of Oak Park

³E-mail from [REDACTED] to Public Access, Office of the Attorney General (November 14, 2018).

⁴Articles of Incorporation under the General Not For Profit Corporation Act, The Oak Park Development Corporation (January 4, 1974).


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* * * in the promotion of trade, commerce, industry and residential development in and about the Village of Oak Park, Illinois."⁵

Article VII, section 10 of the Illinois Constitution of 1970 (Constitution) provides that "[u]nits of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance." The Village exercised its authority under the Constitution to contract with the Corporation as part of an operating agreement "to assist [the Corporation] with financing for [the Corporation's] economic development efforts set forth in [its mission statement.]"⁶ The Corporation's mission includes:

Attracting qualified developers capable of completing projects across Oak Park's business districts that create construction and permanent jobs in the Village while enhancing its built environment

* * *

Attracting other commercial businesses that will expand the Village's tax base and employment options

* * *

Review requests for economic development incentives and make recommendations to the Village


* * *

Designing templates for reporting to the OPEDC Board, the Village Board and the citizens of Oak Park[.]⁷

⁵Articles of Incorporation under the General Not For Profit Corporation Act, The Oak Park Development Corporation (January 4, 1974).

⁶Second Amended and Restated Operating Agreement between the Village of Oak Park and the Oak Park Economic Development Corporation (July 20, 2017).

⁷Mission Statement of the Oak Park Economic Development Corporation (on file with the author).


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According to its by-laws, the Corporation's mission is also to "enhance the quality of life in and the economic health of the Village of Oak Park ('Village') through the expansion of the Village's property tax base, expansion of the Village's sales tax revenue and the creation and retention of jobs in the Village."⁸ The Corporation may assist with economic development in communities neighboring the Village, but only "when the economic activities benefiting [the neighboring communities] will benefit Oak Park."⁹

Under the terms of the operating agreement, the Village provides payments to the Corporation pursuant to a grant schedule through August 31, 2021. The Corporation is required to maintain records "to verify the amounts, recipients and uses of all disbursement of funds" under the operating agreement and "shall provide full access to all relevant materials and to provide copies of the same upon request of the Village or pursuant to a request filed with the Village under the Illinois Freedom of Information Act[.]"¹⁰

DETERMINATION

FOIA provides that all public records in the possession or custody of a public body "are presumed to be open to inspection and copying." 5 ILCS 140/1.2 (West 2016); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). Similarly, the intent of OMA is "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016).

Whether the Corporation is a Subsidiary or Advisory Body of the Village

The requirements of FOIA and OMA apply only to "public bodies." 5 ILCS 140/1 (West 2016); 5 ILCS 120/1 (2016). Section 2(a) of FOIA (5 ILCS 140/2(a) (West 2016)) defines "public body" to include:

⁸Article I, Section 2, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

⁹Article I, Section 3, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

¹⁰Article 8, Section 3, Second Amended and Restated Operating Agreement between the Village of Oak Park and the Oak Park Economic Development Corporation (July 20, 2017).

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[A]ll legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing[.]

Similarly, section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "public body" as:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

The Illinois Supreme Court has observed that the definitions of a public body in FOIA and OMA are "substantially identical" and that there is "no reason to distinguish between the determination of a public body for purposes of the Open Meetings Act and the FOIA." *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶25, 89 N.E. 3d 376, 384 (2017). The plain language of these definitions limits the application of FOIA and OMA to State and local governmental entities of the State of Illinois.

[REDACTED] and [REDACTED] Requests for Review appear to contend, among other things, that the Corporation is a subsidiary or advisory body of the Village. Courts consider three primary factors in determining whether an entity is a subsidiary body under FOIA and OMA: "(1) whether the entity has a legal existence independent of government resolution; (2) the nature of the functions performed by the entity; and (3) the degree of government control exerted over the entity." *Hopf v. Topcorp*, 256 Ill. App. 3d 887, 892 (1st Dist. 1993).

In *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism & Drug Dependence*, 64 Ill. App. 3d 94, 96 (2nd Dist. 1978), the Appellate Court held that a not-for-profit corporation that administered drug and alcohol treatment programs was not a subsidiary body subject to OMA, despite the fact that it was primarily government-funded and its activities were regulated and monitored by various levels of government. The court found that the not-for-profit corporation's "formal legal nature and the independence of both its board of directors and

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its employees from direct government control are extremely significant factors." *Rockford*, 64 Ill. App. 3d at 96. The court stated:

The amount or percentage of governmental funding of a private entity should have no bearing on whether that entity is characterized as a subsidiary for purposes of the Open Meetings Act. Although the Act itself provides that a particular entity need not be publically funded in order to be required to hold open meetings, it does not state that public funding alone will make a particular entity subject to the Act. *Rockford*, 64 Ill. App. 3d at 96.

In *Hopf v. Topcorp*, the Illinois Appellate Court also considered whether a corporation that was created by the City of Evanston in conjunction with Northwestern University to develop a research park was subject to the requirements of FOIA and OMA, using the factors set forth in *Rockford*. *Hopf*, 256 Ill. App. 3d at 889. The corporation, Topcorp, Inc., was created to acquire the land while its subsidiary, Research Park, Inc. (RPI), was created to operate, market, and promote interest in the park. *Hopf*, 256 Ill. App. 3d at 889-90. The City and Northwestern equally shared the operating costs of Topcorp and RPI and each guaranteed half of a \$300,000 loan obtained by RPI. *Hopf*, 256 Ill. App. 3d at 891. The City and Northwestern both also appointed members to a board of directors for each entity; the City appointed its mayor, city manager and an alderman to the Topcorp board. *Hopf*, 256 Ill. App. 3d at 890. The court emphasized that although the City and Northwestern influenced the corporations through their appointments to the boards, "neither the City nor Northwestern can control the two corporations." (Emphasis in original.) *Hopf*, 256 Ill. App. 3d at 894. Further, the City's funding of half of each corporate entity's operations "in and of itself, does not render the corporations public bodies." *Hopf*, 256 Ill. App. 3d at 897. Therefore, the court concluded that Topcorp and RPI were not public bodies subject to the requirements of FOIA or OMA.

Applying the first factor in the *Rockford* test, the Corporation has an independent legal existence as a not-for-profit 501(c)(4) corporation registered with the Office of the Secretary of State. The Corporation argued that it "is a separate and distinct legal entity incorporated under Illinois law, and was not created by the Village or any other public body or by any statute, ordinance, or government resolution."¹¹ In his reply to this office, [REDACTED] disputed the Corporation's assertion that its legal existence was separate from the Village. In particular, [REDACTED] appeared to assert that the Corporation was created by the Village, arguing

¹¹Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (October 4, 2018), at 3.

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it "has no legal existence outside of its creation by the Village."¹² Even assuming the Village was instrumental in creating the Corporation, however, it still has a legal existence separate from the Village as a not-for-profit 501(c)(4) corporation.

Under the second factor, the nature of the functions performed by the entity, the Corporation explained that it "exists to recruit and assist private developers and business owners in locating, investing, and expanding in Oak Park, and not to perform a public, governmental function or otherwise serve as an arm of the Village."¹³ The Corporation's responses to this office also referred to its role in making recommendations to the Village. In response to [REDACTED] Request for Review, the Corporation stated that it made "impartial recommendations to the Village that may at times be at odds with those of Village staff."¹⁴ In response to [REDACTED] Request for Review, the Corporation went into further detail explaining that, as an independent consultant, it "help[s] the Village evaluate responses to Requests for Proposals ('RFPs') for the development of Village-owned parcels and make[s] recommendations to the Village on these proposals[.]"¹⁵ In his reply, [REDACTED] countered the Corporation's assertion that it does not perform government functions by asserting that the Corporation's functions are generally governmental in nature because it "discuss[es] development proposals and create[s] Village marketing plans" in its board meetings.

With respect to the third factor, the degree of government control, the Corporation is governed by an eight-member Board of Directors (Board) that is composed of three Governmental Directors and five At-Large Directors. The three Governmental Directors consist of the Village president, a trustee of the Village Board of Trustees, and the Village manager.¹⁶ The At-Large Directors are elected by the Board upon nomination by the Board's Nomination

¹²E-mail from [REDACTED] to Matt Hartman, [Assistant Attorney General], [Public Access Bureau] (December 14, 2018).

¹³Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (October 4, 2018), at 7.

¹⁴Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (October 4, 2018), at 7.

¹⁵Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 4, 2018), at 3.

¹⁶Article II, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016); <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.


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Committee or by a petition signed by at least five Directors.¹⁷ A Director may only be removed from the Board by two-thirds vote of all of the Directors.¹⁸ The Board is led by four Officers – the Chairman, Vice-Chairman, Treasurer, and Secretary. According to the Corporation, "[n]one of the Officers are Governmental Directors."¹⁹ In addition to the Board, there is an Executive Committee that functions as a Committee of the Whole for the Board.²⁰ The Executive Committee consists of the Officers, the Governmental Directors, and other Directors as deemed necessary by the Executive Committee.²¹ In its answer to this office, the Corporation explained:

[T]he Governmental Directors by themselves do not constitute a quorum of the Board or the Executive Committee, and therefore cannot act on their own to take Board or Executive Committee action. Even if they voted as a bloc, the Governmental Directors only make up one-third of the Board and one-third of the Executive Committee and could thus be out-voted by the At-Large Directors on any matter.^[22]

The Corporation also stated that none its employees or contracted agents are agents or employees of the Village.²³

¹⁷Article II, Section 5, and Article IV, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

¹⁸Article II, Section 9, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

¹⁹Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 4, 2018), at 4.

²⁰Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 4, 2018), at 4.

²¹Article V, Section 1, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

²²Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 4, 2018), at 5.

²³Letter from Michael J. Castellino, Robbins, Salomon & Patt, Ltd., to Matt Hartman, Assistant Attorney General, Public Access Bureau (December 4, 2018), at 5.

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[REDACTED] and [REDACTED] each asserted that the Corporation is a public body because it is either fully funded by or receives substantial funding from the Village. The Corporation and the Village are parties to an operating agreement that provides for the funding of the Corporation by the Village at regular intervals.²⁴ However, no provision of the operating agreement provides the Village with the ability to directly control the Corporation's operations or its employees. In addition, the Board approves the Corporation's annual budget, determines the disbursement of the Corporation's funds, and sets the expenditure authority of the Corporation's Executive Director.²⁵

Under the first factor, the Corporation has a legal existence as a not-for-profit corporation that is independent of the Village, which the court in *Rockford* determined to be an extremely significant factor. With respect to the nature of the functions it performs, the Corporation's activities connected to the expansion of the tax base in the Village and the promotion of business development are governmental in nature.²⁶ Concerning the degree of control exerted by the Village over the Corporation, the Corporation does not appear to be subject to direct governmental control by the Village because the Governmental Directors that represent the Village do not constitute a majority of the members Board or the Executive Committee. See *O'Toole v. Chicago Zoological Society*, 2015 IL 118254, ¶26; 39 N.E. 3d 946, 954 (2015) (concluding that the Forest Preserve District of Cook County (District) did not exercise operational control of the Chicago Zoological Society (Society) because, among other factors, most members of the Society's governing board were not District board members). In addition, none of the Corporation's employees or contracted agents are employees of the Village. Although the Village has three representatives on the Corporation's Board and is undoubtedly closely tied to the Corporation, there is no indication that the Village has the ability or the authority to command the Corporation's operations. Lastly, as stated in *Rockford* and in *Hopf*, because there is insufficient evidence of day-to-day governmental control of the Corporation by the Village, the amount of funding of the Corporation by the Village, even though it is substantial, is not determinative of whether the Corporation is a subsidiary body of the Village.

²⁴Oak Park Economic Development Corporation, Second Amended and Restated Operating Agreement between the Village of Oak Park and the Oak Park Economic Development Corporation (July 20, 2017), <https://oakparkedc.files.wordpress.com/2016/05/vop-opedc-contract-july-2017-to-august-2021-for-website.pdf>.

²⁵Article VII, Section 2, Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation (March 4, 2016), <https://oakparkedc.files.wordpress.com/2017/07/bylaws000.pdf>.

²⁶A further discussion of the governmental functions performed by the Corporation on behalf of the Village may be found below in the Public Access Bureau's analysis of the [REDACTED] assertion of section 7(2) of FOIA.

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Although the parties in this matter focused on the factors used to assess whether an entity is a subsidiary body, this office notes that advisory bodies are also identified in section 2(a) of FOIA and section 1.02 of OMA as public bodies subject to the Act. In *University Professionals of Illinois, Local 4100 of the Illinois Federation of Teachers v. Stukel*, 344 Ill. App. 3d 856 (1st Dist. 2003), the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education because it constituted an advisory body. *Stukel*, 344 Ill. App. 3d at 858. In holding that the Council was not an advisory body for purposes of OMA, the court considered the following factors to be relevant to that assessment:

[1] who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; [2] the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; [3] whether its role is solely advisory or whether it also has a deliberative or investigative function; [4] whether the entity is subject to government control or otherwise accountable to any public body; [5] whether the group has a budget; [6] its place within the larger organization or institution of which it is a part; and [7] the impact of decisions or recommendations that the group makes. *Stukel*, 344 Ill. App. 3d at 858.

These factors have significant overlap with the *Rockford* factors, as both sets examine the independence of the entities and the role that they play in the transaction of public business. The Corporation stated that it assists the Village with evaluating Requests for Proposals related to the development of Village-owned parcels. In addition, the Corporation's mission enables it to make recommendations to the Village concerning economic development incentive requests. However, neither the operating agreement nor the other information provided to this office indicates that the Corporation is assigned particular duties by the Village related to development of Village property or incentive requests, has a formal place within the structure of the Village, or makes binding recommendations to the Village. Therefore, having reviewed the information presented by the parties in light of the relevant factors set out in *Rockford* and in *Stukel*, on balance, this office concludes that the Corporation is not a subsidiary or an advisory body subject to the requirements of FOIA or OMA.

Section 7(2) of FOIA

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[REDACTED] asserted that records responsive to his FOIA request in the possession of the Corporation are records of the Village pursuant to section 7(2) of FOIA, which provides:

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has **contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function** and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act. (Emphasis added.)

In its written answer to this office, the Village asserted that records in the possession of the Corporation were not subject to disclosure in response to a FOIA request to the Village because the Corporation "is not a subsidiary body of the Village, and the Village has not contracted with the [Corporation] to perform governmental functions or perform anything that directly relates to governmental function on behalf of the Village."²⁷ The Village further asserted that "[t]he requested records are regarding a private development and the [Corporation's] private communications as an Illinois not-for-profit corporation regarding that development. The requested records do not touch upon the Village's governmental functions."²⁸ In response to this office's request for additional information concerning the Corporation, the Village stated that pursuant to the operating agreement, it was "the Village's understanding that the Corporation would take cold calls from developers and initiate contacts with developers in general for the development of any parcels in the Village and would refer potential developers to applicable private property owners."²⁹

In *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶¶61-65, 89 N.E.3d 376, 390-91 (2017), the Illinois Supreme Court considered whether the Illinois High School Association (IHSA), a non-profit association that convenes interscholastic sports tournaments for member schools, performed a "governmental function" for a public high school district. The Court construed "governmental function" based on the plain language of that term:

²⁷Letter from Paul L. Stephanides, Village Attorney, Village of Oak Park, to Matt Hartman, Assistant Attorney General, Public Access Bureau (October 12, 2018), at 3.

²⁸Letter from Paul L. Stephanides, Village Attorney, Village of Oak Park, to Matt Hartman, Assistant Attorney General, Public Access Bureau (October 12, 2018), at 2.

²⁹Letter from Paul L. Stephanides, Village Attorney, Village of Oak Park, to Matthew S. Hartman, Assistant Attorney General, Public Access Bureau (February 22, 2019), at 1.

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"a government agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public." Black's Law Dictionary 812 (10th ed. 2014). Noting that the school district's responsibilities are set out in the School Code (105 ILCS 5/1-1 *et seq.* (West 2016)), the Court held that the functions performed by the IHSA—governing and coordinating interscholastic athletic competitions for public and private school students—were not governmental functions because "there is no constitutional, statutory, or other law that mandates or authorizes District 230 to perform those functions." *Better Government Ass'n*, 2017 IL 121124, ¶64, 89 N.E.3d 390.

Section 8-1-2.5 of the Municipal Code (65 ILCS 5/8-1-2.5 (West 2016)) provides that "corporate authorities may appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the municipality." The Village has entered into an operating agreement with the Corporation to support its economic development activities. Thus, unlike the functions performed by IHSA which the court analyzed in *Better Government Ass'n*, the Corporation has been contracted to perform functions that the Municipal Code authorizes the Village to carry out for the benefit of the general public. Although the Illinois Appellate Court has held that *for-profit* economic development corporations that implemented the proprietary aspects of a development plan did not perform governmental functions of a public body (*Hopf v. Topcorp, Inc.*, 170 Ill. App. 3d 85, 92 (1988)), the Illinois Supreme Court has observed that expanding business and facilitating economic growth are legitimate functions of government. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶27, 54 N.E. 3d 825, 832 (2016).

The Village entered into an operating agreement with the Corporation because the Village had "determined it is in the public interest to assist [the Corporation] with financing for [the Corporation's] economic development efforts * * * **on behalf of the Village.**"³⁰ (Emphasis added.) As part of the agreement with the Village, the Corporation "shall hire and maintain a qualified and competent staff to provide all management and administrative services necessary to accomplish [the Corporation's economic development] mission, goals and objectives."³¹ Because the Corporation's promotion of business development supports the Village's legitimate interests in economic growth and expansion of the tax base within the Village, the Corporation is

³⁰Recitals, Second Amended and Restated Operating Agreement between the Village of Oak Park and the Oak Park Economic Development Corporation (July 20, 2017).

³¹Article 5, Section 3, Second Amended and Restated Operating Agreement between the Village of Oak Park and the Oak Park Economic Development Corporation (July 20, 2017).


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performing a government function on behalf of Village. Therefore, records in the Corporation's possession that directly relate to that function are considered public records of the Village pursuant to section 7(2) of FOIA.

[REDACTED] sought, among other things, documents and correspondence between the Corporation and a real estate developer, a financial institution, and several limited liability corporations concerning the development of a specific piece of property. The development is an affordable housing project for which the Village is contributing up to \$500,000 of public funds from its affordable housing fund.³² The information [REDACTED] requested appears to relate the Corporation's involvement in the planning, financing, and construction of the development. The Corporation's records concerning its efforts to facilitate the development with the developer, a financial institution, and other corporations involved in the development directly relate to the governmental function of furthering economic development that the Corporation performs on behalf of the Village. Accordingly, the records in the physical custody of the Corporation concerning its efforts to facilitate the development for the Village are public records of the Village pursuant to section 7(2) of FOIA because they directly relate to the governmental function that the Village has contracted with the Corporation to perform.


In accordance with the conclusions expressed above, this office requests that the Village issue a supplemental response to [REDACTED] request, and disclose to him copies of any responsive records in the possession of the Corporation. If any information is redacted or withheld, the Village should provide a written notice of denial in accordance with section 9(a) of FOIA (5 ILCS 140/9(a) (West 2016)). If the Village asserts that the Corporation does not possess responsive records, it should provide a detailed explanation of the measures that were taken to search for such records.

³²Steve Schering, 'Now is the time for this development': Oak Park board approves 37-unit affordable housing proposal, Chicago Tribune, <http://www.chicagotribune.com/suburbs/oak-park/news/ct-oak-community-builders-tl-1025-story.html> (last visited March 5, 2019).


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The Public Access Counselor has determined that resolution of these matters do not require the issuance of a binding opinion. If you have any questions, please contact me at (217) 782-9054 or the Springfield address listed on the first page of this letter. This letter serves to close these files.

Very truly yours


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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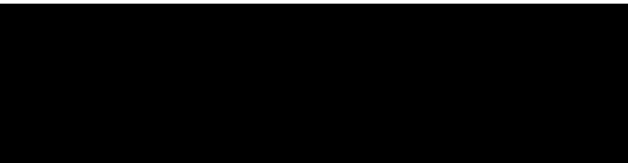


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 23, 2019

Via electronic mail



Via electronic mail

Mr. Brian P. Crowley
Attorney for Elmhurst Community Unit School District No. 205
Franczek Radelet
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
bpc@franczek.com

RE: OMA Request for Review – 2018 PAC 53729

Dear [REDACTED] and Mr. Crowley:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of Elmhurst Community Unit School District No. 205 (District) improperly discussed certain matters in closed session during its June 19, 2018, meeting.

BACKGROUND

On June 23, 2018, [REDACTED] submitted a Request for Review stating that the Board entered closed session during its June 19, 2018, meeting to discuss an administrative reorganization proposal. He asserts that none of the section 2(c) exceptions (5 ILCS 120/2(c) (West 2017 Supp.)) that the Board cited as its bases for entering closed session authorized discussion of that topic.

██████████
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On July 5, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide materials including a verbatim recording of the closed session portion of the Board's June 19, 2018, meeting, together with a written response to ██████████ allegation. On July 26, 2018, counsel for the Board submitted a response contending that the Board's discussion of the administration reorganization proposal was permissible under section 2(c)(1) of OMA. On July 27, 2018, this office forwarded a copy of the response to ██████████ he did not reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2016). Accordingly, OMA requires that all meetings of a public body remain open to the public unless an applicable exception in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.)) is properly invoked. 5 ILCS 120/2(a) (West 2017 Supp.). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2017 Supp.).

Section 2(c)(1) of OMA permits a public body to close a portion of a meeting to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of **specific employees** of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity." (Emphasis added.) The purpose of this "exception is to protect the identity and reputation of a person[.]" 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 128. The Attorney General has previously explained in binding opinions that "[t]he use of the phrase 'specific employees of the public body' significantly limits the scope of this exception. Based on this language, the exception is intended to permit public bodies to candidly discuss the relative merits of individual employees, or the conduct of individual employees." Ill. Att'y Gen. Pub. Acc. Op. No. 15-005, issued August 4, 2015, at 6 (quoting Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015, at 5 (discussion about the termination of position that did not consider the performance of a specific employee or whether a specific employee should occupy the position was not within the scope of 2(c)(1) exception); Ill. Att'y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016, at 5 (section 2(c)(1) did not authorize closed session discussions involving an across-the board pay raise for a category of employees because the discussion concerned a general budgetary matter rather than individual employees).

The Board's response to this office stated, in pertinent part:

During its discussion, the Board and the administrators participating in the discussion address individual employees 17 times, discuss the strengths and capacities of specific employees, how the proposed reorganization will impact specific employees, and further discuss how the current organizational makeup impacts the retention of specific employees. Even when the Board and administration involved in the conversation do not name specific employees, the capacities and performance of specific departments and positions are discussed. These departments have few employees and when the performance of the department is discussed or when a specific position is discussed, those comments are attributable to the job performance of individual employees if not specifically mentioned.^[1]

This office has reviewed the verbatim recording of the relevant portions of the Board's June 19, 2018, closed session discussion, which spanned about 34 minutes. Portions of the discussion concerned individual District employees and the merits of their performance, compensation, and the status of their employment with the District. Although those portions of the discussion were authorized by section 2(c)(1), the Board also discussed matters such as the title of a prospective position and structural and financial comparisons to other school districts. Those topics did not directly concern the appointment, employment, compensation, discipline, performance, or dismissal of specific District employees. Accordingly, those portions of the Board's closed session discussion violated OMA by exceeding the scope of the section 2(c)(1) exception.

To remedy that violation, this office requests that the Board provide [REDACTED] and make publicly available the portions of the June 19, 2018, closed session verbatim recording which did not directly concern the appointment, employment, compensation, discipline, performance, or dismissal of a specific employee.

¹Letter from Brian P. Crowley, Franczek Radelet, to Steve Silverman, Assistant Attorney General, Public Access Bureau (July 26, 2018), at 1-2.

[REDACTED]
Mr. Brian P. Crowley
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
[REDACTED]
STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 23, 2019

Via electronic mail

[REDACTED]
P.O. Box 97
Pearl City, Illinois 61062
[REDACTED]

Via electronic mail

The Honorable Chad Bremmer
President, Board of Education
Pearl City Community Unit School
District No. 200
100 South Summit Street
Pearl City, Illinois 61062
cbremmer@pcwolves.net

RE: Open Meetings Act Request for Review – 2018 PAC 54137

Dear [REDACTED] and Mr. Bremmer:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons explained below, the Public Access Bureau concludes that the Pearl City Community Unit School District No. 200 (District) Board of Education (Board) did not violate the requirements of OMA in connection with the notice provided for its June 20, 2018, budget hearing.

On July 23, 2018, the Public Access Bureau received [REDACTED] Request for Review alleging that the Board violated OMA by failing to post on the District's website the agenda for its June 20, 2018, budget hearing.

On August 1, 2018, this office sent a copy of the Request for Review to the Board and asked it to provide a written response to that allegation, including clarification about whether the District's website is maintained by a full-time staff member of the District. On August 17, 2018, counsel for the Board provided a written response together with signed affidavits from Mr. Tim Thill, the interim Superintendent, and Mr. Scott Woodley, a District technology specialist.

[REDACTED]
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On October 11, 2018, this office forwarded a copy of the Board's response to [REDACTED] on October 23, 2018, she submitted a reply.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) requires an agenda for each regular meeting to be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting, and further provides: "A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body." Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) adds that "a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body."

When construing the meaning of a statute, the primary objective is to ascertain the intent of the legislature. *See, e.g., DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). A statute should not be construed in a way that would defeat its purpose or yield an absurd or unjust result. *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 106 (2000).

[REDACTED] Request for Review alleges that the Board violated OMA by failing to post a copy of its June 20, 2018, budget hearing meeting on the District's website. The Board's response to this office acknowledged that it did not post the agenda online, but explained that the District's website is not maintained by a full-time staff member during the summer months when the District is not in session. The Board explained that during the school year, until May 21, 2018, Mr. Woodley was a full-time technology specialist with responsibility for maintaining the District's website. The Board stated that from May 21, 2018, until August 17, 2018, Mr. Woodley's hours were reduced and he was only a part-time technology specialist. Mr. Thill and Mr. Woodley's affidavits affirmed that the District's website was not maintained by a full-time staff member from May 21, 2018, to August 17, 2018. Further, the Board has confirmed that the agenda for the June 20, 2018, budget hearing was properly posted at the Board's principal office and meeting location at least 48 hours before the meeting.

In a similar Request for Review previously submitted by [REDACTED] this office determined that the Board was not required to post an agenda on the District's website because the website was not maintained by its full-time staff. Ill. Att'y Gen. PAC Req. Rev. Ltr. 48553, issued October 10, 2017, at 2. In her reply to this office, [REDACTED] distinguishes the current matter on the basis that the Board has acknowledged that it employs a full-time staff member for part of the year to maintain its website. However, the plain language of the above-cited provisions of OMA expressly require the posting of the agenda on a public body's website only if its full-time staff "maintains" the website. The word "maintains" is in the present tense, which indicates that the full-time staff must maintain the website at the time of the relevant meeting. See *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2013) (Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express."). Accordingly, because the District did not employ a full-time staff member in June 2018, to maintain its website, the District was not required to post its agendas to the District's website.

[REDACTED] reply also disputes the District's statement that its website is not maintained by a full-time staff member during the summer months. She appears to question whether Mr. Woodley's responsibilities include website maintenance, but she does not indicate what other full-time employee has responsibility for maintaining the website. She suggests that the Superintendent has website maintenance responsibilities because of a stipend he received as the technology coordinator for the District, but her assertion is speculative. [REDACTED] also contends that the Board never approved Mr. Woodley's part-time employment arrangement for the summer months. Although OMA generally requires public bodies to conduct public business openly, the Act does not require public bodies to take action on administrative matters such as the scheduling and employment of public employees. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 48267, issued June 23, 2017, at 2 (concluding that OMA does not govern the firing of an employee by a village's president when the president did not first advise, and receive approval from, the village's board of trustees). In sum, [REDACTED] has not provided evidence to support her assertion that Mr. Woodley did not maintain the website on a part-time basis in June 2018.

[REDACTED] reply also asserts that because the Board posted on the District's website the agenda for its June 20, 2018, regular meeting, it was also required to post the agenda for the June 20, 2018, budget hearing. As discussed above, section 2.02(b) of OMA unambiguously provides that a public body such as the Board is only required to post agendas on its website if the website is maintained by full-time staff of the public body. Accordingly, this office concludes that the Board did not violate the advance notice requirements of OMA in connection with its June 20, 2018, budget hearing.

[REDACTED]
The Honorable Chad Bremmer

April 23, 2019

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

54137 o 202 notice proper sd

cc: *Via electronic mail*
Mr. Nicholas J. Petrovski
Robbins Schwartz
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npetrovski@robbins-schwartz.com



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 24, 2019

Via electronic mail
Mr. Adam Chudzik
Norwood Park Watchdog

[REDACTED]
npwatchdog182@gmail.com

Via electronic mail
Ms. Katherine Gaseor
Executive Assistant & FOIA Officer
Village of Norridge
4000 North Olcott Avenue
Norridge, Illinois 60706
kgaseor@villageofnorridge.com

RE: OMA Request for Review – 2018 PAC 52277

Dear Mr. Chudzik and Ms. Gaseor:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that, based on the available information, the Board of Trustees (Board) of the Village of Norridge (Village) did not violate the requirements of OMA in connection with a March 13, 2018, gathering.

BACKGROUND

On March 20, 2018, Mr. Adam Chudzik submitted a Request for Review to the Public Access Bureau alleging that the Board violated the requirements of OMA on March 13, 2018, when four trustees attended a meeting at Eisenhower Public Library. He contended that the Board did not provide advance notice of this meeting. Mr. Chudzik asserted: "It is believed

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that the discussion of this meeting was the transfer of public funds from the Village of Norridge to another public body. This is clearly 'public business' and in the public interest."¹

On March 22, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to respond in writing to the allegations in Mr. Chudzik's Request for Review. If the Board asserted that the gathering did not constitute a "meeting" subject to the requirements of OMA, this office asked it to provide an explanation of the purpose of the gathering and to identify the Board members who attended. On March 27, 2018, this office received a written response from the Board. On April 2, 2018, this office forwarded a copy of the Board's response to Mr. Chudzik; he replied on April 9, 2018.

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

If a gathering of the members of a public body qualifies as a "meeting," then all of the requirements of OMA apply. The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. In another opinion, the Attorney General concluded that the "mere fact that a majority of a

¹E-mail from Adam Chudzik, Norwood Park Watchdog, to Public Access Counselor (March 20, 2018).

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quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" does not make the presentation subject to OMA, but that the extensive discussions of public business by members of two county boards during the presentation at issue did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. A gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business." *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982). See also Ill. Att'y Gen. PAC Req. Rev. Ltr. 44519, issued March 7, 2017, at 4 (task force gathering which four aldermen and the mayor attended was not a "meeting" of the city council subject to OMA where the council members gave brief opening remarks, but there was no evidence that a majority of a quorum of the members engaged in any further deliberative discussions during the gathering).

In its response to this office, the Board denied Mr. Chudzik's claim that it held a meeting on March 13, 2018, for the purpose of discussing public business. The Board stated that Mr. Chudzik did not attend the meeting, which "was held by the members of School District 80's 'Save the Band' committee at the Eisenhower Library, and not the Village of Norridge."² The Board acknowledged that four trustees—a quorum of the Board—attended the gathering, but argued that they "were at this meeting as individual residents of the Village of Norridge's District 80 to see what the committee was doing to help save the band. No Village business was conducted."³

In reply to that answer, Mr. Chudzik contended that "[t]he Village and others discussed Village resources being used in conjunction with the Norridge School District 80 'Save the Band' program."⁴ Mr. Chudzik quoted from what he said was the last paragraph of the Village's "2018 State of the Village" statement, which discussed the "Save the District 80 Band Program" campaign. The paragraph highlighted by Mr. Chudzik described the "Save the District 80 Band Program" campaign as a fundraising effort headed by a group of parents and community members to reinstate the school band program, which had been eliminated due to budget constraints; the paragraph provided details on how to get involved in the campaign or donate to it. Mr. Chudzik asserted that "[t]he Village has Village employees selling Save the Band T-

²Letter from Katherine M. Gaseor, Executive Assistant & FOIA Officer, Village of Norridge, to Sandra Cook, Assistant Attorney General, Public Access Bureau (March 26, 2018).

³Letter from Katherine M. Gaseor, Executive Assistant & FOIA Officer, Village of Norridge, to Sandra Cook, Assistant Attorney General, Public Access Bureau (March 26, 2018).

⁴E-mail from [Adam Chudzik] to [Hattie Bryant] (April 9, 2018).

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Shirts at the Village Hall during normal business hours[,]" and that it advertised the "Save the Band" fundraising efforts on its website and Facebook page.⁵ He contended, in relevant part:

Even if no final action was taken at the meeting in question, there was a discussion regarding Village resources. And considering the fact that the Village of Norridge has partnered with Norridge School District 80's 'Save the Band' committee to raise funds, any meeting with a 'quorum' of officials with the 'Save the Band' committee should be considered public business.^[6]

In this matter, the Village confirmed that a quorum of the Board attended a meeting of the "Save the Band" community group at the Eisenhower Library on March 13, 2018. The parties do not dispute that the gathering pertained to the "Save the District 90 Band Program" campaign. While Mr. Chudzik contended that there was a discussion concerning Village resources at the gathering in question, he did not provide additional details regarding the four trustees' alleged participation in the gathering or other information indicating that they collectively engaged in deliberative discussions about the transfer of Village funds to the campaign. He also did not contest the Village's assertion that he did not attend the gathering, nor did he provide information sufficient to corroborate his allegations about what transpired there.⁷ Although the cited excerpt from the "2018 State of the Village Statement" publicizes and expresses support for the campaign, it does not provide evidence that the trustees engaged in conduct at the March 13, 2018, gathering which constituted a "meeting" of the Board under the definition of that term in OMA. The Village contended that the four trustees who attended the gathering did so as individual school district residents rather than in their capacities as members of the Board, and that they attended to learn more about the group's activities. Accordingly, based on the available information, this office is unable to conclude that the March 13, 2018, gathering was a meeting of the Board subject to the requirements of OMA.

⁵E-mail from [Adam Chudzik] to [Hattie Bryant] (April 9, 2018).

⁶E-mail from [Adam Chudzik] to [Hattie Bryant] (April 9, 2018).

⁷Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides that a Request for Review "must include a summary of the facts supporting the allegation."

Mr. Adam Chudzik
Ms. Katherine Gaseor
April 24, 2019
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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM
Assistant Attorney General
Public Access Bureau

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